

KAPLAN

JUDGE KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
QUANTUM CORPORATE FUNDING, LTD.,

08 CV 00539
Docket No.

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD
INCORPORATED, DAVID B. WARFIELD,
And NATIONAL CITY MORTGAGE INC.,

**ORDER TO SHOW CAUSE
FOR PRELIMINARY
INJUNCTION WITH TEMPORARY
RESTRAINING ORDER**

Defendants.
-----X

Upon the Affidavit of Craig Sheinker, sworn to the 22 day of January, 2008,
and the Affidavit of Bernard Kobroff, Esq. sworn to January 22, 2008 and upon the
copy of the Complaint hereto annexed, it is,

ORDERED, that the above named defendants, Westwood Design/Build
Incorporated and David R. Warfield, show cause before a motion term of this Court, at
Room 12D, United States Courthouse, 500 Pearl Street, in the City, County and State of
New York, on Jan 25, 2008 at 11 o'clock in the morning thereof, or as
soon thereafter as counsel may be heard, why an Order should not be issued pursuant to
Rule 65 of the Federal Rules of Civil Procedure: (a) enjoining the defendant Westwood
Design/Build Incorporated during the pendency of this action from, without the written
consent of the plaintiff, selling, transferring, assigning or in any way conveying or
encumbering assets pledged by it to plaintiff as security, or of moneys received in
payment of its accounts receivable, or of moneys received from the plaintiff, or of goods
and materials paid for by plaintiff; and (b) enjoining the defendant David R. Warfield
from, without the written consent of the plaintiff, selling, transferring, assigning or in

anyway conveying or encumbering any monies on property in the name of or received from or belonging to or held for the benefit of defendant Westwood Design/Build Incorporated; and its further;

ORDERED, pending the hearing, and determination of this order to show cause, that (a) defendant Westwood Design/Build Incorporated ^{shall} ~~may~~ not, without the written consent of the plaintiff, sell, transfer assign or in any way convey or encumber assets pledged by it to plaintiff as security, or of moneys received in payment of its accounts receivable, or of moneys received from the plaintiff, or of goods, and materials paid for by plaintiff; and (b) defendant David R. Warfield ^{shall} ~~may~~ not, without the written consent of the plaintiff, sell, transfer, assign or in anyway convey or encumber any monies on property in the name of or received from or belonging to or held for the benefit of defendant Westwood Design/Build Incorporated; and it is further;

ORDERED that security in the amount of \$ 5,000 be posted by the plaintiff prior to 4:30 pm on 1/23/08, at o'clock in the ~~noon of that day~~, and it is further provided, however, that this order is effective immediately,

ORDERED that personal service of a copy of this Order and the annexed Affidavits upon the defendants Westwood Design/Build Incorporated and on David R.

Warfield, or their counsel, on or before 1 pm 1/24/08 on o'clock in the noon,

1/24/08, , shall be deemed good and sufficient service thereof.

Dated: New York, New York 1/22/08

ISSUED: 3:22 pm

United States District Judge

Kobroff Affidavit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD
INCORPORATED, DAVID B. WARFIELD,
And NATIONAL CITY MORTGAGE INC.,

Defendants.
-----X

Civil Action 08 CV 00539
Docket No.

**AFFIDAVIT IN SUPPORT
OF TEMPORARY
RESTRAINING ORDER**

BERNARD KOBROFF, being duly sworn deposes and says:

1. I am associated with the law firm of Goetz Fitzpatrick LLP, attorneys for the plaintiff, Quantum Corporate Funding Ltd. ("Quantum"), in the above captioned matter.

2. I submit this Affidavit to set forth the efforts plaintiff made to give notice to defendant Westwood Design/Build Incorporated ("Westwood") and to defendant David R. Warfield ("Warfield") of Quantum's intention to apply for a Temporary Restraining Order pending the hearing and determination of plaintiff's Order to Show Cause for a Preliminary injunction: (a) enjoining the defendant Westwood from, without the written consent of the plaintiff, selling, transferring, assigning or in any way conveying or encumbering assets pledged by it to plaintiff as security, or of moneys received in payment of its accounts receivable, or if moneys received from the plaintiff, or of goods and materials paid for by plaintiff; and (b) enjoining the defendant Warfield from, without the written consent of the plaintiff, selling, transferring, assigning or in anyway conveying or encumbering any monies or property in the name of our received from or belonging to or held for the benefit of defendant Westwood.

3. On Thursday January 17, 2008, I faxed to defendants Warfield and Westwood at Westwood's office, a copy of my letter addressing and giving notice to defendants:

"that on behalf of Quantum I intend to apply to the Court on Tuesday, January 22, 2008, at 2 P.M. for a Preliminary Injunction and for a Temporary Restraining Order enjoining Westwood from, without written consent of the Quantum, selling, transferring, assigning or in any way conveying or encumbering assets pledged by it to Quantum as security, or of moneys received in payment of its account receivable or of money received from Quantum, or of goods and materials paid for by Quantum, and enjoining and restraining yourself from, without the written consent of Quantum, selling, transferring, assigning or in any way conveying or encumbering any monies or property in the name of or received from or belonging to or held for the benefit of Westwood."

A copy of my letter is annexed hereto as Exhibit "A".

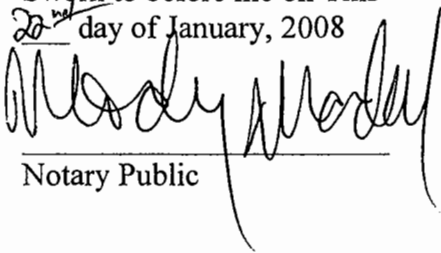
4. However, Westwood's office fax machines would not accept these fax transmissions. See copies of "failed" fax confirmation requests annexed hereto as Exhibit "B".

5. In addition, on Thursday January 17, 2008, I also sent my letter (Exhibit "A" hereto) by overnight Federal Express to defendant Warfield at his home address and to defendant Westwood at its business address. Copies of the respective Fed Ex Airbills are annexed hereto as Exhibit "C".

6. No prior application has been made for this relief.


Bernard Kobroff

Sworn to before me on This
22nd day of January, 2008


Notary Public

MORDY MANDELL
Notary Public, State of New York
No. 02MA5042487
Qualified in Kings County
Commission Expires June, 13, 2011

Exhibit A



GOETZ FITZPATRICK LLP

One Penn Plaza, New York, NY 10119 | (T) 212-695-8100 | (F) 212-629-4013

Bernard Koboroff
bkoboroff@goetzfitz.com

January 17, 2008

By Fax (410) 813-2828

And Fed Ex

David R. Warfield
Westwood Design/Build Incorporated
12109 Gordon Avenue
Beltsville, Maryland 20705

Re: Quantum Corporate Funding, Ltd., v. Westwood
Design/Build Incorporated, et al.

Dear Mr. Warfield:

We are the attorneys for Quantum Corporate Funding, Ltd. ("Quantum").

Please Be Advised And Take Notice that Quantum intends to commence an action against both yourself personally and Westwood Design/Build Incorporated ("Westwood") in United States District Court, Southern District of New York, for breach of contract, fraud and conversion.

Please Be Further Advised And Take Notice that on behalf of Quantum I intend to apply to the Court on Tuesday, January 22, 2008, at 2 P.M. for a Preliminary Injunction and for a Temporary Restraining Order enjoining Westwood from, without written consent of the Quantum, selling, transferring, assigning or in any way conveying or encumbering assets pledged by it to Quantum as security, or of moneys received in payment of its accounts receivable or of money received from Quantum, or of goods and materials paid for by Quantum, and enjoining and restraining yourself from, without the written consent of Quantum, selling, transferring, assigning or in any way conveying or encumbering any monies or property in the name of or received from or belonging to or held for the benefit of Westwood.



GOETZ FITZPATRICK LLP

Accordingly, if you or Westwood or your attorneys intend to oppose Quantum's aforesaid application for a Temporary Restraining Order, please arrange to meet me at the Clerk's office of the Court, located at 500 Pearl Street, New York, New York, at 2pm on January 23, 2008. If either your or Westwood's attorney have any questions regarding this matter, my telephone number is (212) 695-8100.

Very truly yours,

GOETZ FITZPATRICK LLP

By: _____

Bernard Koboroff

BK/am

cc:

David R. Warfield
715 East Maple Road
Linthicum Heights, Maryland 21090
Via Federal Express

W:\bkobroff\Quantum\Westwood\01.17.08 Warfield.doc



GOETZ FITZPATRICK LLP

One Penn Plaza, New York, NY 10119 | (T) 212-695-8100 | (F) 212-629-4013

Bernard Koboroff
bkoboroff@goetzfitz.com

January 17, 2008

By Fax (410) 813-~~2828~~ - 0010
And Fed Ex

David R. Warfield
Westwood Design/Build Incorporated
12109 Gordon Avenue
Beltsville, Maryland 20705

Re: Quantum Corporate Funding, Ltd., v. Westwood
Design/Build Incorporated, et al.

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GOETZ FITZPATRICK LLP

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Very truly yours,

GOETZ FITZPATRICK LLP

By: _____

Bernard Kobroff

BK/am

cc:

David R. Warfield
715 East Maple Road
Linthicum Heights, Maryland 21090
Via Federal Express

W:\bkobroff\Quantum\Westwood\01.17.08 Warfield.doc

Exhibit B

Confirmation Report - Memory Send

Date & Time: Jan-17-2008 05:42pm
Tel line : 212 629 4013
Machine ID : GOETZ FITZPATRICK LLP

Job number : 541
Date & Time : Jan-17 05:37pm
To : 914108132828
Number of pages : 002
Start time : Jan-17 05:39pm
End time : Jan-17 05:42pm (Resend time : Jan-17 06:42pm)
Pages sent : 000
Status : NG BO

Job number : 541 *** SEND FAILED ***



GOETZ FITZPATRICK LLP
One Penn Plaza, New York, NY 10119 | (T) 212-695-8700 | (F) 212-629-4013

Bernard Koboroff
bkoboroff@goetzfitz.com

January 17, 2008

By Fax (410) 813-2828
And Fed Ex

David R. Warfield
Westwood Design/Build Incorporated
12109 Gordon Avenue
Beltsville, Maryland 20705

Re: Quantum Corporate Funding, Ltd., v. Westwood
Design/Build Incorporated, et al.

Dear Mr. Warfield:

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55 Harristown Rd. Glen Rock, NJ 07452 | 201-612-4444 (F) 201-612-4455
170 Old Country Rd. Suite 200, Mineola, NY 11501 | 516-741-2162 (F) 516-746-1024
120 Bloomingdale Rd. Suite 104 White Plains, NY 10605 | 914-946-7735 (F) 914-946-0098

Confirmation Report - Memory Send

Date & Time: Jan-17-2008 07:12pm
Tel line : 212 629 4013
Machine ID : GOETZ FITZPATRICK LLP

Job number : 542
Date & Time : Jan-17 07:09pm
To : 914108130010
Number of pages : 002
Start time : Jan-17 07:09pm
End time : Jan-17 07:12pm (Resend time : Jan-17 08:12pm)
Pages sent : 000
Status : NG BO

Job number : 542 *** SEND FAILED ***



GOETZ FITZPATRICK LLP
One Penn Plaza, New York, NY 10119 | (T) 212-695-8100 | (F) 212-629-4013

Bernard Koboroff
bkoboroff@goetzfitz.com

January 17, 2008

- Solo
By Fax (410) 813-~~2828~~
And Fed Ex
David R. Warfield
Westwood Design/Build Incorporated
12109 Gordon Avenue
Beltsville, Maryland 20705

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Design/Build Incorporated, et al.

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170 Old Country Rd. Suite 200, Mineola, NY 11501 | 516-741-2162 (F) 516-746-1024
120 Bloomingdale Rd. Suite 104 White Plains, NY 10605 | 914-946-7735 (F) 914-946-0098

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1000
2261**FedEx**® US AirbillFedEx
Tracking
Number

8624 0098 7865

Express

1 From Print, post and post hard.

Date 01/17/2007

Sender's FedEx
Account Number

1001-3389-0

Sender's
Name Bernard Kooroff

Phone (212) 695-8100

Company GOETZ FITZPATRICK

Address 1 PENN PLZ STE 4401

DnpFed@amr.com

City NEW YORK

State NY ZIP 10119

2 Your Internal Billing Reference

102187.201229

First 24 characters will appear on invoice.

3 To

Recipient's Name David R. Werfield

Phone ()

Company

Recipient's Address 715 East Maple Road

DnpFed@amr.com

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address

To request a package be held at a specific FedEx location, print FedEx address here.

City Lithium Heights State MD ZIP 21090

0364410570

Find drop-off locations at fedex.com
Sign up for shipping Manager, your account, and access to the tools you need.

0215

Sender's Copy

4a Express Package Service

☐ Next Business Day
Next business morning, Friday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.☐ FedEx 2Day
Second business day, Thursday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.☐ FedEx Overnight
First business day, Thursday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.☐ FedEx 1Day Freight[®]
Next business day, Friday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.☐ FedEx 2Day Freight[®]
Second business day, Friday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.

5 Packaging

☒ FedEx Envelope^{*}☐ FedEx Pak^{*}
FedEx Large Pak and FedEx Small Pak.☐ FedEx Box☐ FedEx Tube☐ Other
^{*} Declared value limit \$500.

4b Express Freight Service

☐ FedEx 1Day Freight[®]
Next business day, Friday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.☐ FedEx 2Day Freight[®]
Second business day, Friday
shipment will be delivered on Monday
unless SAT/DAV Delivery is selected.

6 Special Handling

☐ SAT/DAV Delivery☐ HOLD Weekday
at FedEx Location
NOT Available for
FedEx Standard Overnight,
FedEx Priority Overnight, FedEx
2Day, FedEx Overnight, and
FedEx 1Day Freight.☐ HOLD Saturday
at FedEx Location
Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.☐ Does this shipment contain dangerous goods?☐ No ☐ Yes
As per attached
Shipper's Declaration,
not required.☐ Dry Ice ☐ Dry Ice
As per attached
Shipper's Declaration,
not required.☐ Cargot Aircraft Only☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required☐ Signature Required

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

Sheinker Affidavit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD INCORPORATED,
DAVID R. WARFIELD, and NATIONAL CITY
MORTGAGE INC.,

Defendants.
-----X

Civil Action 08 CV 00539
Docket No.

**AFFIDAVIT IN SUPPORT
OF ORDER TO SHOW
CAUSE AND FOR A
TEMPORARY
RESTRAINING ORDER**

CRAIG SHEINKER, being duly sworn, deposes and says:

1. I am the President of Quantum Corporate Funding, Ltd. ("Quantum"), the plaintiff herein, have examined Quantum's records and have personal knowledge of the facts and circumstances hereinafter set forth and submit this Affidavit in support of Quantum's motion for a preliminary injunction and a Temporary Restraining Order: (a) enjoining and restraining the defendant Westwood Design/Build Incorporated ("Westwood") from, without the written consent of the plaintiff, selling, transferring, assigning or in any way conveying or encumbering assets pledged by it to Quantum as security, or of moneys received in payment of its accounts receivable or of moneys received from the plaintiff or of goods and materials paid for by Quantum and; (b) enjoining and restraining the defendant David R. Warfield ("Warfield") from, without the written consent of the plaintiff, selling, transferring, assigning or in any way conveying or encumbering any monies or property in the name of or received from or belonging to or held for the benefit of defendant Westwood.

2. Quantum seeks in this action to recover from defendants Westwood and Warfield the \$242,900.00 of Quantum's monies which said defendants converted by fraudulently inducing Quantum to purchase from them an account receivable by fraudulently representing to Quantum that said receivable, in the amount of \$347,000.00, was due and owing to Westwood by defendant National City Mortgage Inc. ("National").

BACKGROUND

3. Quantum is in the business of accounts receivable financing and it specializes in factoring construction industry invoices. Headquartered in New York City, Quantum is one of the largest purchasers of contractor receivables in the United States.

4. In or about January, 2007, Mr. and Mrs. Eustace Pollydore, as owners, entered into a contract with defendant Westwood, as contractor, with defendant National as construction lender, pursuant to which Westwood contracted to construct a new home for Mr. and Mrs. Pollydore at 6117 Elm Avenue, Lanham, Maryland (the "Project"). A copy of the Westwood/Pollydore contract together with National's lending commitment are annexed hereto as Exhibit "A".

THE TRANSACTION

5. In 2007, defendant Westwood, by defendant Warfield, approached Quantum to obtain cash to continue operating its business by selling Quantum an account receivable. To implement this arrangement, Westwood, by Warfield, offered to assign to Quantum its \$347,000.00 invoice for the Project, which it represented were monies due Westwood from defendant National in connection therewith (the "Invoice"). A copy of the Westwood Invoice is

annexed hereto as Exhibit "B".

THE ESTOPPEL CERTIFICATE

6. Since Quantum has no independent way of knowing if the contractor offering to sell its accounts receivable has, in fact, actually performed work and furnished materials of the value invoiced, Quantum contacts the account debtor, in this case the construction lender, defendant National, and requests from the account debtor, a written acknowledgment of and an estoppel certificate for the debt.

7. Accordingly, in December 2007, Quantum contacted defendant National's Branch Manager, Christopher Washburn, at National's office in Greenbelt, Maryland, and requested confirmation that the Invoice (Exhibit "B" hereto) was correct, forwarding to defendant National an Estoppel Certificate covering the Invoice.

8. In response, defendant National, by its Branch Manager, Christopher Washburn, signed the Estoppel Certificate, in the amount of \$347,000.00, and returned it to Quantum. A copy of defendant National's executed Estoppel Certificate, citing Westwood's Invoice, is annexed hereto as Exhibit "C".

9. The Estoppel Certificate, executed by defendant National states:

"The undersigned Account Obliger acknowledges to Quantum Corporate Funding, Ltd. that the above invoice Amount(s) are correct and owing by us; that the work and or merchandise has been ordered from and completed by the captioned Client, and accepted by us that there are not now, nor will there be, any claims, setoffs, or defenses beyond 20% of the Invoice Amount(s). Neither Quantum nor its agents made any representations except as herein set forth. This estoppel is not subject to modification. New York law, jurisdiction and venue shall apply hereto."

10. In reliance upon defendant National's Estoppel Certificate, Quantum purchased

the Invoice and gave value to Westwood for its assignment of this accounts receivable.

THE PURCHASE AND SALE AGREEMENT

11. The assignment of the Westwood Invoice to Quantum was made by an agreement, entitled Purchase & Sale Agreement (the "Agreement"). A copy of the Agreement is annexed hereto as Exhibit "D".

12. As regards the Invoice, the Agreement executed by defendant Westwood as "Seller", stated in pertinent part that:

"Seller represents, warrants and agrees that:

* * * * *

(b) The correct total amount of said account(s) is \$347,000.00;

(c) Said account(s) are presently due and owing to Seller and the amount(s) thereof are not and will not be in dispute;

(d) There are not and will not be any set-offs or counterclaims against said account(s)...

* * * * *

(h) Should any of the warranties expressed by Seller be inaccurate and it becomes necessary for Purchaser to utilize an attorney to enforce its rights against Seller, Seller agrees that such attorneys fees shall be borne by Seller."

(i) Purchaser further agrees that if the amount referred to in (b) above...is not paid by the account debtor(s) thereof for any reason other than a breach of the representations, warranties and covenants contained herein. Seller shall not be liable to repay to Purchaser any amount paid by Purchaser to Seller in consideration of the sale, transfer and assignment herein contained.

* * * * *

(l) To secure the representations and covenants made by Seller in this agreement...Seller hereby grants to Purchaser a continuing security interest in all personal property..in which Seller has an

interest, now or hereafter existing or acquired, and wheresoever located...tangible or intangible, including but not limited to, all present or hereafter existing or acquired...goods...equipment...inventory...cash or cash equivalents...contract rights...money, now or hereafter owned or acquired by Seller...and all proceeds and collections thereof...unshipped goods....Further to this purpose, Seller hereby grants Purchaser and its agents Power of Attorney to sign it's name on any applicable financing statements (UCC'1 and otherwise) in order to effectuate filing(s) on the aforementioned assets of seller. Upon any default in Sellers representations, warranties, and covenants Purchaser may enforce said security agreement in accordance with the provisions of the Uniform Commercial Code.

* * * * *

(g) This agreement shall be governed by the laws of the State of New York...Seller hereby submits, at the election of Purchaser, to personal jurisdiction in the State of New York for the enforcement of this agreement or any claim(s) hereunder....

(Emphasis added).

THE GUARANTEE

13. In addition, as regard the defendant Seller Westwood's representations and warranties, defendant Warfield executed a "Guarantee" for the sale which stated:

"The undersigned...hereby personally guarantee(s) and shall be jointly and severally liable for the warranties, representations and covenants made by Seller set forth above."

See Exhibit "D" (2nd Page).

THE NOTICES AND FILING

14. Defendant Westwood, as assignor, gave written notice to defendant National of its assignment to Quantum of the Invoice. A copy of Westwood's written notice to National is annexed hereto as Exhibit "E".

15. Quantum, as assignee, also gave written notice of the assignment to defendant

National. Quantum's notice consisted of sending to National a copy of the Westwood Invoice which bore the following stamped notation thereon:

"This invoice has been sold, assigned and transferred to:

Quantum Corporate Funding, Ltd.

Make all checks payable and mail to:
Quantum Corporate Funding, Ltd.
1140 Avenue of the Americas, 16th Floor
New York, New York 10036"

A copy of the Invoice bearing this stamped notification, is annexed hereto as Exhibit "B"

16. Further, as regards the transaction and Quantum's perfection of its security interest, Quantum filed a UCC-1 in the State of Maryland as to defendant Westwood. A copy of this filing is annexed hereto as Exhibit "F".

THE PURCHASE PRICE PAYMENT

17. Pursuant to the Agreement, on December 21, 2007, Quantum paid defendant Westwood \$242,900.00 for the Invoice by wiring, pursuant to defendant Westwood, by defendant Warfield, specific instructions, \$130,731.72 to Westwood and \$112,168.28 to Penn Lyon Homes Corporation ("Penn Lyon"), a material supplier to Westwood. Copies of defendant Warfield's instructions and Quantum's wire transfers are annexed hereto as Exhibit "G".

THE FRAUD UNRAVELS

18. In early January 2008, plaintiff Quantum contacted defendant National's main office in Miamisburg, Ohio to confirm that pursuant to the Assignment and the Agreement that payment of the Invoice would be made by National directly to Quantum, as assignor, rather than to Westwood, the assignee.

19. Additionally, plaintiff Quantum also attempted to contact defendant Westwood to

advise it that if defendant National paid the Invoice to it, instead of Quantum, that the payment was required to be turned over to Quantum.

20. However, despite several attempts to reach defendant Westwood by telephone, Quantum was unable to make contact, which raised Quantum's concerns.

21. Quantum then decided to contact the Project owners, the Pollydore's and was advised by Mrs. Pollydore that not only had the house not been constructed, no materials had been delivered, the lot had not even been cleared, and that no road to the lot existed.

22. After receiving this information, I contacted defendant Westwood's supplier, Penn Lyon, to confirm that it had shipped the material to construct Mr. and Mrs. Pollydore's house to Westwood. I was advised by Penn Lyon that they had never heard of Pollydore's and that the \$112,168.28 Penn Lyon invoice No. 850 which Quantum had paid, had been altered to reference the Pollydore's residence while Penn Lyon's Invoice No. 850 referenced a different owner's residence. A copy of the fabricated Penn Lyon invoice which Quantum paid at Westwood's direction is annexed hereto as Exhibit "H".

23. Upon receiving this information, Quantum contacted Mike Conrad, the individual who had executed the Pollydore's contract [Exhibit "A" hereto] on Westwood's behalf and was advised by him that both Mrs. Pollydore's and Penn Lyon's information was incorrect. Mr. Conrad advised me that he would look into the matter and that either he or defendant Warfield would telephone me on Monday January 14, 2008 with the results of their investigation.

24. Neither I nor anyone else at Quantum has since received any communications from either defendant Westwood or from defendant Warfield or from Mr. Conrad, and all attempts by Quantum to reach any of them by telephone have not been answered.

25. Further, on January 15, 2008, Mr. Timothy Justice, defendant National's Construction Lending Department's Manager, advised Quantum that National had no obligation to Quantum or agreement with Quantum regarding payment of the Invoice. See e-mail annexed hereto as Exhibit "I".

26. Given defendant Westwood's weak financial position and its inability to secure bank financing, which was the reason that it sought to obtain operating cash from Quantum by selling Quantum the Invoice, the fact that Penn Lyon has advised me that the invoice which Quantum paid had been fabricated, the fact that neither Westwood nor defendant Warfield nor Mr. Conrad have communicated with Quantum, and the fact that Westwood is no longer answering its phone or receiving fax transmissions, all leads me to believe that defendant Westwood is insolvent and that defendants Westwood and Warfield will abscond, if they have not done so already, with the \$130,731.32 that Quantum wired on December 21, 2007 and will otherwise dispose of the \$112,168.28 of materials that Quantum paid Westwood's supplier, Penn Lyon, for, thus rendering any judgment which may be recovered against defendants Westwood and Warfield ineffectual and unenforceable.

WHEREFORE it is respectfully requested that the Court grant a preliminary injunction and a Temporary Restraining Order, enjoining and restraining the defendant Westwood during the pendency of this action and the hearing and determination of this Order to Show Cause from, without the written consent of Quantum, selling, transferring, assigning or in any way conveying or encumbering assets pledged by it to Quantum as security, or of moneys received in payment of its accounts receivable, or of moneys received from Quantum, or of goods and materials paid for by Quantum and enjoining the defendant Warfield from, without the written consent of Quantum,

selling, transferring, assigning or in any way conveying or encumbering any monies or property
in the name of or received from or belonging or held for the benefit of defendant Westwood.


CRAIG SHEINKER

Sworn to before me this
2nd day of January, 2008


NOTARY PUBLIC

BERNARD KOBROFF
NOTARY PUBLIC, State of New York
No. 4603478
Qualified in Westchester County
Commission Expires May 31, 2010

W:\bkobroff\Quantum\Westwood\sheinker.aff.wpd

Exhibit A



CONTRACT

THIS AGREEMENT, Made as of December 18th, In the Year of 2006,

Between the Owner: **Mr. & Mrs. Eustace Pollydore**
5300 Gallatin Street
Hyattsville, MD 20781
301-277-1455

And the Contractor: **Westwood Design/Build Incorporated**
License # 16054316
P.O. Box 105
Beltsville, MD 20704
301-813-2626 Office
301-937-2359 Fax

For the Project: **New Home Construction**
6117 Elm Street
Lanham, MD 20706

Construction Lender: **National City Mortgage**

ARTICLE 1. CONTRACT DOCUMENTS

1.1 The contract documents consist of this agreement, general conditions, construction documents, specifications, allowances, finish schedules, construction draw schedule, all addenda issued prior to execution of this agreement and all change orders or modifications issued and agreed to by both parties. All documents noted herein shall be provided to the Contractor by the Owner. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

ARTICLE 2. SCOPE OF WORK

2.1 The Owner agrees to purchase and the Contractor agrees to construct the above mentioned structure and fixtures attached thereto in **Lanham, county of Prince George's in the state of Maryland** according to the construction documents, allowances, finish schedules, all addenda, change orders, modifications and specifications set forth in the specification booklet.

ARTICLE 3. TIME OF COMPLETION

3.1 The approximate commencement date of the project shall be **January 1st, 2007**. The approximate completion date of the project shall be **August 31st, 2007**, however, building permits and any change orders and/or unusual weather might delay or otherwise affect the completion date. Barring inclement weather, factory delays or owner related delays, the Contractor shall complete the home within 3 months upon receipt of the building permit. The contract execution date shall be **December 19th, 2006**.

ARTICLE 4. THE CONTRACT PRICE

4.1 The construction contract shall be calculated on a cost plus coordination basis, with all labor, materials, permits and insurance figured as costs.

Initialed by: Owner

Contractor

4.2 Pre-construction estimates for construction costs and coordination are **Three-Hundred-Twelve-Thousand, Eight-Hundred-Fifty (\$312,850.00)**, Closing costs shall be paid by the Owner.

ARTICLE 5. PROGRESS PAYMENTS

5.1 The Owner will make payments to the contractor through four (4) separate draws based on invoices for labor, materials and modular units submitted.

Lot Premium	\$ 149,000.00	.26 Acre / 11,200 Sq/Ft Lot Purchase
Builder Deposit:	10% of the Construction Cost is required when Prince Georges County releases permit.	
Foundation Draw:	20% of the Construction Cost is required at foundation completion.	
Modular Home Set:	60% of the Construction Cost is required at Modular Delivery and Set.	
Finishing and Closing:	10% of the Construction Cost is required at punch-out completion.	

Owner shall make payments to contractor within **5 business days** after approved inspection by owner. Inspection by Owner must correspond with Addendum A attached. Should the owner fail to make payment, contractor may charge a penalty of **18%** annually upon the unpaid amount until paid.

5.2 If payment is not received by the Contractor within **10** days after delivery of payment demand for work satisfactorily completed, contractor shall have the right to stop work or terminate the contract at it's option. Termination by Contractor under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination. Termination by Owner under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination.

ARTICLE 6. DUTIES OF THE CONTRACTOR

- 6.1 All work shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order.
- 6.2 All work shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.
- 6.3 All work shall be performed by licensed individuals to perform their said work, as outlined by law.
- 6.4 Contractor shall obtain all permits necessary for the work to be completed. The contractor is required to pay any and all impact fees charged by Prince George's County.
- 6.5 Contractor shall remove all construction debris and leave the project in a broom clean condition.
- 6.6 Upon satisfactory payment being made for any portion of the work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the work for which payment has been made.

ARTICLE 7. OWNER

- 7.1 The Owner shall communicate with subcontractors only through the Contractor.
- 7.2 The Owner will not assume any liability or responsibility, nor have control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.
- 7.3 Contractor shall provide all engineering and surveying required by Prince George's County.

a. Horizontal and Vertical Control	e. Stormwater Management Plan	i. Limits of Disturbance
b. Topography	f. Sediment Control Plan	j. Foundation Stake Out
c. Boundary Survey	g. Utility Coordination	k. Wall Check
d. Site Grading and Landscape Plan	h. TCP Waiver	l. All Certifications
m. Public Water/Sewer Connection	n. Geotechnical Report	

7.4 Contractor shall obtain all construction permits necessary for the work to be completed.

7.5 Contractor shall build access road, per Prince Georges County specification, to Owner's parcel.

ARTICLE 8. CHANGE ORDERS AND FINISH SCHEDULES

8.1 A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. 50% of the cost of each change order will be paid prior to the change, with the final 50% paid upon completion of the change order. A 12% fee shall be added to all change orders and overages in excess of initial allowances. Additional time needed to complete change orders shall be taken into consideration in the project completion date. **NO CHANGE ORDERS WILL BE ACCEPTED AFTER FINAL HOME ARCHITECTURAL DRAWINGS HAVE BEEN REVIEWED AND APPROVED BY THE OWNER.**

8.2 Completed Finish Selection Schedules shall be submitted to the Contractor as follows:

8.2.1 Schedule #1 within four weeks after site clearing begins.

8.2.2 Schedule #2 within eight weeks after site clearing begins.

8.3 Any delays or changes in finish selection schedules will delay the projected completion date.

ARTICLE 9. INSURANCE

9.1 The Owner will keep in force a Builder's Risk Insurance Policy on the said property to protect both owner's and contractor's interests until construction is completed. The Owner will maintain property insurance to the full and insurable value of the project, in case of a fire, vandalism, malicious mischief or other instances that may occur.

9.2 The Contractor shall purchase and maintain needed Workman's Compensation and Liability insurance coverage as required by law and deemed necessary for his own protection.

ARTICLE 10. GENERAL PROVISIONS

10.1 If conditions are encountered at the construction site which are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

ARTICLE 11. HAZARDOUS MATERIALS, WASTE AND ASBESTOS

11.1 Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Owner/Contractor to contract with a properly licensed and qualified hazardous material contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

ARTICLE 12. ARBITRATION OF DISPUTES

12.1 Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

ARTICLE 13. WARRANTY

13.1 At the completion of this project, Contractor shall execute an instrument to Owner warranting the project for **10 Years** against defects in workmanship or materials utilized. The manufacturers warranty will prevail. No legal action of any kind relating to the project, project performance or this contract shall be initiated by either party against the other party after **10 Years** beyond the completion of the project or cessation of work.

ARTICLE 14. TERMINATION OF THE CONTRACT

- 14.1 Should the Owner or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:

14.1.1 If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee. In the case of a defaulting Owner, the Earnest money herein mentioned shall be applied to the legally ascertained damages.

14.1.2 In the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.

14.1.3 In the case of a defaulting Owner, the Contractor may accept, at his option the earnest money as shown herein as liquidated damages, should earnest money not cover the expenses to date, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages applicable to the property less the earnest money.

ARTICLE 15. ATTORNEY FEES

- 15.1 In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

ARTICLE 16. ACCEPTANCE AND OCCUPANCY

- 16.1 Upon completion, the project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.
- 16.2 The Owner shall not occupy the property until final payment has been received by the Contractor and a Certificate of Occupancy has been obtained.
- 16.3 Occupancy of the project by the Owner in violation of Article 16.2, shall constitute unconditional acceptance of the project and a waiver of any defects or uncompleted work.

WITNESS our hand and seal on this 17th day of January, 2007.

Signed in the presence of:

Witness

Michael Conrad

Witness

Mr. Eustace Pollydore

Mrs. June Pollydore

National City Mortgage

Modular Home (delivered to site) Draw Schedule

Owner: Pollydore #0005351534

20% Foundation complete. Well is drilled and acceptable. \$ 99,200.00

70% Payment of modular package, delivery to site.
Unit to be removed from truck and/or trailer
set on foundation. \$ 347,200.00

Completion of permanent roof, windows set in place, all exterior doors hung, exterior walls complete, interior drywall complete, taped and spackled, all interior carpentry complete, kitchen cabinets and all fixtures have been set, deck complete and insulation installed.

10% Exterior Siding Complete \$ 49,600.00

Final seaming of carpeting and/or flooring walls completed, finishing touches regarding fixtures and kitchen cabinets completed, septic tank installed. Dwelling complete. Driveway, rough grading and top soil complete. All owner responsibilities **MUST** be completed.

Builder/Contractor:

Signature

Borrower(s):

June Pollydore
Owner

June Pollydore
Borrower

**Please allow at least 10 business days after closing before contacting
NCM's Draw Department for you first draw.**

A Division of National City Bank of Indiana

NOV-08-2007 12:22

P.10

FPMC a division of
National City Bank

11/08/2007

JUNE A POLLYDORÉ
EUSTACE A POLLYDORÉ
5300 CALLAHAN STREET
HYATTSVILLE, Maryland 20781

We are pleased to inform you that your application for a Construction/Permanent first mortgage loan on the property located at 6117 ELM ST, LANHAM, Maryland 20706 has been approved subject to the terms and conditions presented in this Commitment.

Summary of Terms and Conditions:

You have elected:

- ☐ A Fixed Rate Mortgage with interest rate limitations as set forth in your Construction/Permanent Capped Floating Rate Agreement.
- ☒ A Fixed Rate Mortgage with interest rate lock.
- ☐ An Adjustable Rate Mortgage as set forth in the Adjustable Rate Mortgage Program Disclosure you were provided.

The term of this loan includes a set period of time to complete construction of the premises. You will pay interest only on principal amounts disbursed during the construction period. Payments on your permanent loan will not begin until the earlier of completion of the premises or the set period for construction completion.

Construction draws will be made in accordance with the Construction Loan Agreement provided for your signature at the loan closing. You must deposit with us, at the time of closing, the difference between the loan funds available and the total cost of the construction. We estimate your deposit will be \$ 9,797.30.

The following are important terms of your loan.

Loan Amount	\$	<u>496,000.00</u>	Loan Type	<u>CVR</u>
Initial Interest Rate		<u>7.000</u>	Loan Sub Type	<u>Fixed</u>
Term of Loan		<u>360</u>	Discount Points	<u>0</u>
Origination Fee		<u>1,000</u>	% Construction Fee	<u>0</u>

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Commitment Letter
 Page 2

Estimated Principal and Interest due after completion of construction:

Monthly Payment (P&I) \$ 1,993.87
 Monthly Taxes \$ _____
 Monthly Insurance \$ _____
 Monthly PMI \$ 247.50

Estimated Total Monthly Payment \$ 4,241.37

If your loan is an Adjustable Rate Mortgage and ☐ if this box is checked, you will have the opportunity to convert your loan to a fixed rate loan for the remainder of your original loan term on the (check as applicable): ☐ first, second, third, fourth and fifth interest rate change date, or ☐ first and second interest change dates if you are not then in default and have not made a payment 30 or more days after the payment due date at any time within the twelve-month period immediately preceding the Change Date.

Additional Conditions of This Commitment to Be Submitted Prior To Closing:

Additional Conditions of This Commitment to Be Presented At Closing:

Other Terms and Conditions of This Commitment:

1. An escrow account for real estate taxes and insurance premiums will be required. Therefore, one-twelfth of the annual payment for these items is to be included in your monthly payment.
2. In the event that there is any change in the property to be mortgaged, your financial condition, or your employment status between the date of application and the final closing of this loan, FMC a division of National City Bank at its option, may withdraw this commitment.

CONSTJ2

(12/04)

Commitment Letter
Page 3

3. The loan and the closing shall be in compliance with the requirements of the federal, state and local governments now in effect or hereinafter to be enacted.
4. All documents, mortgages, and other matters connected with this loan shall be subject to our approval in form and in substance, and our decision shall be final and conclusive.
5. The Note, Construction Loan Agreement, Mortgage, Construction/Permanent Loan Agreement and all other documents pertaining to the loan are to be signed by all the Borrower(s) listed above. Therefore, all the Borrower(s) must be present at the time of the closing. Additionally, the seller(s) and/or the Contractor must execute certain documents. If the Seller/Contractor will not be present at the closing, please notify the Closing Agent when you schedule your closing.
6. A completed application must be signed at the time of closing.
7. In order to have a smooth closing of this transaction, the Closing Agent must have the following items at least five (5) banking days prior to the day you wish to close your loan:
 - A. An ALTA Mortgage Title Insurance Commitment, in form and through a company acceptable to us, insuring against loss or damage in the amount of your loan, showing the mortgage to be a good and valid first lien on the property. The policy must insure, in addition to other items, against material and mechanic's liens of record and eliminate survey exceptions. The proposed mortgagee should read _____.
 - B. Fire and extended coverage insurance including vandalism and malicious mischief (Builder's Risk coverage) and to cause to be provided to Lender evidence of workers compensation and general liability insurance in the amount, form and in companies satisfactory to the Lender, which insurance shall be payable to Borrower with standard mortgage endorsement attached making loss payable to the Lender or its assigns or mortgagee. A policy must be provided to the closing agent along with evidence that the first year's premium has been paid in full.

Commitment Letter

Lender reserves the right to refuse to make the loan under the terms and conditions set forth in this commitment where it is discovered that any facts represented by applicant(s) are false in any respect, where any credit reporting information is found to be inaccurate, or where bankruptcy or other laws would prevent or inhibit the Lender's ability to make the requested loan.

THIS COMMITMENT EXPIRES BY March 1, 2008. YOUR LOAN MUST CLOSE ON OR BEFORE THIS DATE. IF YOUR LOAN DOES NOT CLOSE BY THE COMMITMENT EXPIRATION DATE FOR ANY REASON, EVEN REASON BEYOND YOUR CONTROL, OR YOU REQUEST TO CHANGE THE AMOUNT OR ANY OTHER TERMS OF YOUR LOAN, WE MAY CHANGE ANY OF THE TERMS OF YOUR LOAN, INCLUDING INTEREST RATE, POINTS AND FEES OR WE MAY WITHDRAW YOUR COMMITMENT. IF WE ELECT TO EXTEND YOUR COMMITMENT, WE MAY REQUIRE THAT THE INFORMATION NEEDED FOR YOUR APPLICATION BE UPDATED SINCE SUCH INFORMATION IS ONLY VALID FOR NINETY DAYS.

Sincerely,



By:

Chris Washburn
(Type Name)

Title:

Branch Manager / VP

Exhibit B



INVOICE

Date	Invoice #
12/18/2007	10084

BILL TO:
National City Mortgage/National City Bank Christopher Washburn, Vice President 9852 Walker Drive, Suite 400 Greenbelt, MD 20770

REMIT TO:
Westwood Design/Build Inc. P.O. Box 105 Beltsville, MD 20704

	Terms	P.O. No.	PROJECT	
	Net 45		Pollydore Residence	
Quantity	Description		Rate	Amount
	Construction Draw Pollydore Module Delivery - #0005351534 Curbside Delivery Completed Amount Due and Owing		347,000.00 0.00	347,000.00 0.00
<p>This invoice has been sold, assigned and transferred to: Quantum Corporate Funding, Ltd.</p> <p>Make all checks payable and mail to: Quantum Corporate Funding, Ltd. 1140 Avenue of the Americas, 16th Floor New York, New York 10036</p>				
Modules Delivered			Total	\$347,000.00

Exhibit C

Quantum Corporate Funding, Ltd.

1140 Avenue of the Americas, 16th Floor
 New York, N.Y. 10036
 Tel. 212 768-1200
 800 352-2585
 Fax 212 944-8216

12/18/07

Mr. Christopher Washburn
 Branch Manager
 National City Mortgage Company
 7852 Walker Drive, Suite 400
 Greebelt, MD 20770

Re: Our Transaction# 25914 Client: Westwood Design Build Incorporated
 Our Debtor#: 32772. Our Client#: 5999

P.O.#/Contract#	Job# / Project#	Controller#	Contract/ P.O.Date	Invoice#	Inv.Date	Terms	Invoice Amount
	Project: Pollydora Residence. Construction Draw, Pollydora module delivery-#0005351534.			10084	12/18/07	45	****\$347,000.00

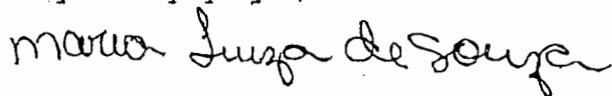
*****\$347,000.00

Dear Mr. Washburn:

We are the assignee of payment of the above captioned company. Attached is a letter from it authorizing all payments on the captioned invoices to be sent directly and solely to Quantum Corporate Funding, Ltd.

The undersigned Account Obligor acknowledges to Quantum Corporate Funding, Ltd. that the above invoice Amount(s) are correct and owing by us; that the work and or merchandise has been ordered from and completed by the captioned Client, and accepted by us; that there are not now, nor will there be, any claims, setoffs, or defenses beyond 20% of the Invoice Amount(s); Neither Quantum nor its agents made any representations except as herein set forth. This estoppel is not subject to modification. New York law, jurisdiction and venue shall apply hereto.

Very truly yours,



Shelley Simmonds
 Senior Account Exec.

Agreed & Accepted

Authorized Signature

Account Obligor: National City Mortgage Company
 Print Name:

Title



Exhibit D

Transaction# 75914 Client# 5999 Rebate Class 70FTW Adv# 07

PURCHASE & SALE AGREEMENT

In consideration of the sum of \$ *****\$242,900.00

\$112,168.28 to Penn Lyon Homes Corp.
 \$130,731.72 to Westwood Design
 paid by purchaser to seller,

Westwood Design Build Incorporated

receipt of which is hereby acknowledged, the undersigned ("Seller") hereby sells, transfers and assigns to Quantum Corporate Funding, Ltd. ("Purchaser"), its successors and assigns all Seller's right, title and interest in and to Seller's account(s) receivable (including the proceeds of any surety, payment bond or guaranty thereof) owing by various account debtors described in Exhibit "A" attached hereto and made part hereof, together with all rights of action accrued, or to accrue thereon, including, without limitation, full power to collect, sue for, compromise, assign, or in any other manner enforce collection thereof in Purchaser's name or otherwise.

Seller represents, warrants and agrees that:

(a) The Seller is the sole and absolute owner of said account(s), and has full legal right to make said sale, assignment, and transfer, and that said sale transfer or assignment does not conflict with the terms of any other agreement, or instrument to which Seller is a party.

(b) The correct total amount of said account(s) is \$ *****\$242,900.00

(c) Said account(s) are presently due and owing to Seller and the amount(s) thereof are not and will not be in dispute; and the payment of said account(s) are not and will not be contingent upon the fulfillment of this, or any other contract(s), past or future.

(d) There are not and will not be any set-offs or counterclaims against said account(s), and said account(s) have not been previously assigned or encumbered by Seller in any manner whatsoever.

(e) Purchaser has right of endorsement on all payments received in connection with said account(s), and Seller hereby appoints Purchaser its attorney in fact for said purpose. In order to accommodate the accounting needs of its clients, Seller hereby directs purchaser, as agent, to accept and deposit all checks received from sellers clients whether or not they represent assigned accounts.

(f) Seller will promptly advise Purchaser, in writing, if Seller's place of business and record keeping is changed or a new place is added.

(g) At Purchaser's request, Seller hereby agrees to file a Notice of Mechanics Lien on any real property improvement upon which it has performed labor or furnished materials, the account for which labor and/or materials it has assigned to Purchaser. In the event Seller fails to promptly comply with such request, Seller does hereby constitute and appoint Purchaser as its agent to execute and file in the name of Seller a Notice of Mechanic's Lien to the extent of the debt due from the account debtor for and on account of such labor and material. In connection with the filing of such Notice of Mechanic's Lien, the Seller agrees to periodically advise the Purchaser of the amount or amounts owed by the account debtor in connection with each real improvement so that the Notice of Mechanic's Lien will be accurate in all respects. Seller further agrees not to provide the account debtor with a "Waiver of Right to File a Notice of Mechanic's Lien" without the prior written consent of Purchaser.

(h) Should any of the warranties expressed by Seller be inaccurate and it becomes necessary for Purchaser to utilize an attorney to enforce its rights against Seller, Seller agrees that such attorney fees shall be borne by Seller.

(i) Purchaser further agrees that if the amount referred to in (b) above (or any portion thereof) is not paid by the account debtor(s) thereof for any reason other than a breach of the representations, warranties and covenants contained herein, Seller shall not be liable to repay to Purchaser any amount paid by Purchaser to Seller in consideration of the sale, transfer and assignment herein contained.

(j) Purchaser warrants that it will use its best efforts to collect the amounts due under this agreement and Seller agrees that Purchaser may, in its sole discretion, settle, compromise, or otherwise accept payment of less than the full amount, if in its judgement such action is necessary to effect collection, by reason of a violation of any of the representations and warranties contained in this agreement.

(k) In the event it should become necessary for the Purchaser to enforce its rights hereunder against Seller, the Guarantor(s) or the Account Debtor(s), Seller agrees that Purchaser may apply up to maximum of thirty third and one third (33 1/3%) of clause (b) for Purchaser's attorney's fees therefor.

(l) To secure the representations and covenants made by Seller in this agreement, but not the credit risk of the Account(s), Seller hereby grants to Purchaser a continuing security interest in all personal property and fixtures in which Seller has an interest, now or hereafter existing or acquired, and wheresoever located, tangible or intangible, including but not limited to, all present or hereafter existing or acquired tools, goods, (including without limitation, all equipment), inventory, furniture, receivables, accounts, security agreements, notes, bills, acceptances, instruments, installment paper, chattel paper, documents, certificates of deposit, tax refunds, insurance proceeds, conditional sale or lease contracts, cash or cash equivalents, chattel mortgages or deeds of trust, general intangibles, all intellectual property including, without limitation patents, trademarks and copyrights (and applications for all of the foregoing), contract rights, and all other hypothecation, and promises or duty to pay money, now or hereafter owned or acquired by Seller (including without limitation all rights of Seller as an unpaid vendor), and all proceeds and collections thereof, all guarantees and other security therefor, and all right, title and interest of Seller in any returned repossessed, rejected or un-shipped goods, together with all of Seller's books of accounts, ledger cards and records, all vehicles, all computer programs, and systems owned or operated in connection therewith, all of the above securing present and future advances and all proceeds, products, returns add-ons, accessions and substitutions of and to pay any of the foregoing. Further to this purpose, Seller hereby grants Purchaser and its agents Power of Attorney to sign its name on any applicable financing statements (UCC's and otherwise) in order to effectuate filing(s) on the aforementioned assets of seller. Upon any default in Seller's representations, warranties, and covenants Purchaser may enforce said security agreement in accordance with the provisions of the Uniform Commercial Code.

(m) No failure or delay on the part of Purchaser in exercising any right power or remedy granted to purchaser hereunder shall constitute a waiver thereof. No amendment, modification or waiver of, any provision of this Agreement shall be effective unless the same shall be in writing and signed and delivered by Purchaser.

(n) Purchaser shall have the right to deduct the amount of any allowance(s), discount(s), returns(s), defense(s), or offset(s) taken by the Account Debtor(s) from any other accounts receivable or other billing rights purchased by purchaser from Seller or demand reimbursement from Seller based upon representations made by Seller in this agreement as to the Account and Purchaser shall have such other rights and remedies against Seller as shall be available to Purchaser at law or in equity, all of which rights and remedies are hereby expressly reserved.

(o) The Account(s) shall be the property of Purchaser, solely and shall be collected by Purchaser, but if for any reason any amount(s) thereon should be paid to Seller, Seller shall notify Purchaser immediately of such payment(s), shall hold any check(s), note(s), draft(s), monies or other instruments for the payment of money so received in trust for the benefit of Purchaser, and shall pay over such monies and transmit such check(s) or draft(s) to Purchaser in kind, at its office within 2 days of receipt thereof. SELLER ACKNOWLEDGES THAT FAILURE TO PAY OVER SUCH PAYMENTS WITHIN 5 DAYS TO PURCHASER SHALL BE A DEFAULT HEREUNDER AND FURTHERMORE SHALL CAUSE SELLER TO FORFEIT ANY RIGHTS IT MAY HAVE WITH RESPECT TO ANY OTHER PAYMENTS DUE OR TO BECOME DUE TO SELLER UNDER THIS AGREEMENT.

(p) The paragraphs of this Agreement are severable, and in the event that any paragraph or portion of this Agreement is declared illegal or unenforceable, the remainder of this Agreement will be effective and binding upon the parties.

(q) This agreement shall be governed by the laws of the State of New York applicable to contracts executed in and to be performed solely within the State of New York. Seller hereby submits, at the election of Purchaser, to personal jurisdiction in the State of New York for the enforcement of this agreement or any claim(s) hereunder, and hereby waives any and all rights under the Laws of any foreign jurisdiction to object to such jurisdiction. Any claim by Seller against Purchaser shall be brought in the State of New York only. In any suit or proceeding relating to this Agreement, the parties mutually waive trial by jury.

(R) SELLER IRREVOCABLY & UNCONDITIONALLY WARRANTS THAT IT WILL AT ALL TIMES REMAIN CURRENT ON ANY AND ALL STATE OR FEDERAL PAYROLL AND SALES TAXES.

(S) Seller hereby grants Quantum authority to sign its name on any forms required by any governmental entities (including but not limited to Blumberg T491's or similarly required government forms) for the purpose of perfecting the notification of an assignment and transfer of payment to Purchaser and/or to recover from a breach of the security agreement provided for in (1) above.

Seller (assignor) Covenants that he will receive any moneys advanced hereunder as trust funds to be first applied to the following expenditures arising out of the improvement of real property and incurred in the performance of said contract;

A) Payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen;

B) Payment of the amount of taxes based on payrolls including such persons and withheld or required to be withheld or required to be withheld and taxes based on the purchase price or value of materials or equipment required to be installed or furnished in connection with the performance of the improvement;

C) Payment of taxes and unemployment insurance and other contributions due by reason of the employment out of which such claims arose;

D) Payment of any benefits or wage supplements, or the amounts necessary to provide such benefits or furnished such supplements, to the extent that the trustee, as employer, is obligated to pay or provide such benefits or furnish such supplements by any agreement to which he is a party;

E) Payment of premiums on a surety bond or bonds filed and premiums on insurance accrued during the making of the improvement.

Nothing in this covenant shall be considered as imposing upon the Purchaser (assignee) any obligation to see to the proper application of moneys advanced under such assignment by the assignee.

SELLER AGREES TO HOLD PURCHASER HARMLESS FROM ANY BREACH OF SELLER'S REPRESENTATIONS, WARRANTIES, AND AGREEMENTS CONTAINED HEREIN WITHOUT ANY EFFECT WHATSOEVER FOR SETOFFS, DEDUCTIONS OR COUNTERCLAIMS.

ACCEPTED AND AGREED

✓ Dated this day of _____, 2007

By: _____
QUANTUM CORPORATE FUNDING LTD.

By: X _____
SIGNATURE AND TITLE

Guarantee: The undersigned (not including the Seller) hereby personally guarantee(s) and shall be jointly and severally liable for the warranties, representations and covenants made by Seller set forth above.

By: _____

By: X _____ (NO TITLE NEEDED)
SIGNATURE ONLY

Affirmation And Certification:
State of _____ County of _____
Sworn to before me this _____

:SS
day of _____ 20__

Signature of Notary Public _____

WE ARE PURCHASING OUTRIGHT THE GROUP OF ACCOUNTS ANNEXED HERETO FOR THE PRICE SPECIFIED ON THE REVERSE SIDE HEREOF. WE ARRIVED AT THE PRICE BY ANALYZING THE CREDIT RISK THAT WE ARE ASSUMING AS WELL AS THE TIME THAT MIGHT ELAPSE BEFORE WE COLLECT THE PROCEEDS OF THOSE ACCOUNTS THAT DO ULTIMATELY PAY US. AS AN INDUCEMENT TO OUR CLIENTS TO SELL US THE "HIGHEST QUALITY" ACCOUNTS, (I.E., THOSE THAT ARE PAID QUICKLY) WE ARE PLEASED TO OFFER REBATES ON THE DISCOUNT THAT WE APPLIED IN ARRIVING AT THE PURCHASE PRICE, PROVIDED THAT WE SHALL HAVE FIRST RECOVERED OUR PURCHASE PRICE IN FULL WITHIN 180 DAYS OF THE DATE OF THE PURCHASE. THE FOLLOWING SCHEDULE SHOWS THAT AMOUNT OF REBATES THAT YOU MAY BE ENTITLED TO IN THOSE CASES WHERE THE ACCOUNTS SHOULD BE PAID TO US MORE QUICKLY THAN WE HAD ANTICIPATED WHEN WE CALCULATED THE DISCOUNT. THERE SHALL BE NO REBATE ON INVOICES COLLECTED BEYOND 180 DAYS. NOTWITHSTANDING ANYTHING CONTAINED HEREIN UNDER NO CIRCUMSTANCES SHALL THE DISCOUNT EARNED BY PURCHASER AMOUNT TO LESS THAN \$250.00.

T# 25914

Accounts of The Bulk Paid within 1 to 30 days\$	27. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 31 to 40 days\$	26. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 41 to 50 days\$	25. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 51 to 60 days\$	24. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 61 to 70 days\$	23. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 71 to 80 days\$	22. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 81 to 90 days\$	21. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 91 to 100 days\$	20. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 101 to 110 days\$	19. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 111 to 120 days\$	18. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 121 to 130 days\$	17. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 131 to 140 days\$	16. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 141 to 150 days\$	15. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 151 to 160 days\$	14. per Hundred of The Account Amount.
Accounts of The Bulk Paid within 161 to 170 days\$	13. per Hundred of The Account Amount.

12/20/2007 17:26 FAX 212 388 5519

CORPORATE OFFICE

0002

Transaction# 2554 Client# 2000 Rebate Class 2000 Advt 0.1

PURCHASE & SALE AGREEMENT

→ \$112,168.28 to Penn Lyan Homes Corp.
 → \$130,731.72 to Westwood Design
 paid by purchaser to seller.

In consideration of the sum of \$ 242,900.00

Westwood Design Build Incorporated

receipt of which is hereby acknowledged, the undersigned ("Seller") hereby sells, transfers and assigns to Quantum Corporate Funding, Ltd. ("Purchaser"), its successors and assigns all Seller's right, title and interest in and to Seller's account(s) receivable (including the proceeds of any surety, payment bond or guaranty thereof) owing by various account debtors described in Exhibit "A" attached hereto and made part hereof, together with all rights of action accrued, or to accrue thereon, including, without limitation, full power to collect, sue for, compromise, assign, or in any other manner enforce collection thereof in Purchaser's name or otherwise.

Seller represents, warrants and agrees that:

(a) The Seller is the sole and absolute owner of said account(s), and has full legal right to make said sale, assignment, and transfer, and that said sale transfer or assignment does not conflict with the terms of any other agreement, or instrument to which Seller is a party.

(b) The correct total amount of said account(s) is \$ 242,900.00.

(c) Said account(s) are presently due and owing to Seller and the amount(s) thereof are not and will not be in dispute; and the payment of said account(s) are not and will not be contingent upon the fulfillment of this, or any other contract(s), past or future.

(d) There are not and will not be any set-offs or counterclaims against said account(s), and said account(s) have not been previously assigned or encumbered by Seller in any manner whatsoever.

(e) Purchaser has right of endorsement on all payments received in connection with said account(s), and Seller hereby appoints Purchaser its attorney in fact for said purpose. In order to accommodate the accounting needs of its clients, Seller hereby directs purchaser, as agent, to accept and deposit all checks received from seller's clients whether or not they represent assigned accounts.

(f) Seller will promptly advise Purchaser, in writing, if Seller's place of business and record keeping is changed or a new place is added.

(g) At Purchaser's request, Seller hereby agrees to file a Notice of Mechanic's Lien on any real property improvement upon which it has performed labor or furnished materials, the account for which labor and/or materials it has assigned to Purchaser. In the event Seller fails to promptly comply with such request, Seller does hereby constitute and appoint Purchaser as its agent to execute and file in the name of Seller a Notice of Mechanic's Lien to the extent of the debt due from the account debtor for and on account of such labor and material. In connection with the filing of such Notice of Mechanic's Lien, the Seller agrees to periodically advise the Purchaser of the amount or amounts owed by the account debtor in connection with each real improvement so that the Notice of Mechanic's Lien will be accurate in all respects. Seller further agrees not to provide the account debtor with a "Waiver of Right to File a Notice of Mechanic's Lien" without the prior written consent of Purchaser.

(h) Should any of the warranties expressed by Seller be inaccurate and it becomes necessary for Purchaser to utilize an attorney to enforce its rights against Seller, Seller agrees that such attorney fees shall be borne by Seller.

(i) Purchaser further agrees that if the amount referred to in (b) above (or any portion thereof) is not paid by the account debtor(s) thereof for any reason other than a breach of the representations, warranties and covenants contained herein, Seller shall not be liable to repay to Purchaser any amount paid by Purchaser to Seller in consideration of the sale, transfer and assignment herein contained.

(j) Purchaser warrants that it will use its best efforts to collect the amounts due under this agreement and Seller agrees that Purchaser may, in its sole discretion, settle, compromise, or otherwise accept payment of less than the full amount, if in its judgement such action is necessary to affect collection, by reason of a violation of any of the representations and warranties contained in this agreement.

(k) In the event it should become necessary for the Purchaser to enforce its rights hereunder against Seller, the Guarantor(s) or the Account Debtor(s), Seller agrees that Purchaser may apply up to maximum of thirty third and one third (33 1/3%) of clause (h) for Purchaser's attorney's fees therefor.

(l) To secure the representations and covenants made by Seller in this agreement, but not the credit risk of the Account(s), Seller hereby grants to Purchaser a continuing security interest in all personal property and fixtures in which Seller has an interest, now or hereafter existing or acquired, and wherever located, tangible or intangible, including but not limited to, all present or hereafter existing or acquired tools, goods, (including without limitation, all equipment), inventory, furniture, receivables, accounts, security agreements, notes, bills, acceptances, instruments, installment paper, chattel paper, documents, certificates of deposit, tax refunds, insurance proceeds, conditional sale or lease contracts, cash or cash equivalents, chattel mortgages or deeds of trust, general intangibles, all intellectual property including, without limitation patents, trademarks and copyrights (and applications for all of the foregoing), contract rights, and all other hypothecation, and promises or duty to pay money, now or hereafter owned or acquired by Seller (including without limitation all rights of Seller as an unpaid vendor), and all proceeds and collections thereof, all guarantees and other security therefor, and all right, title and interest of Seller in any returned repossessed, rejected or un-shipped goods, together with all of Seller's books of accounts, ledger cards and records, all vehicles, all computer programs, and systems owned or operated in connection therewith, all of the above securing present and future advances and all proceeds, products, returns add-ons, accretions and substitutions of and to pay any of the foregoing. Further to this purpose, Seller hereby grants Purchaser and its agents power of attorney to sign its name on any applicable financing statements (UCC's) and otherwise in order to effectuate filing(s) on the aforementioned assets of Seller. Upon any default in Seller's representations, warranties, and covenants Purchaser may enforce said security agreement in accordance with the provisions of the Uniform Commercial Code.

(m) No failure or delay on the part of Purchaser in exercising any right power or remedy granted to purchaser hereunder shall constitute a waiver thereof. No amendment, modification or waiver of, any provision of this Agreement shall be effective unless the same shall be in writing and signed and delivered by Purchaser.

(n) Purchaser shall have the right to deduct the amount of any allowance(s), discount(s), returns(s), defense(s), or offset(s) taken by the Account Debtor(s) from any other accounts receivable or other billing rights purchased by purchaser from Seller or demand reimbursement from Seller based upon representations made by Seller in this agreement as to the Account and Purchaser shall have such other rights and remedies against Seller as shall be available to Purchaser at law or in equity, all of which rights and remedies are hereby expressly reserved.

\\quantcorp\ccs\lg\Purchase_agr

PLEASE FAX THIS PAGE BACK ALSO

12/20/2007 16:45 4108591196

12/20/2007 17:30 4108132828

WESTWOOD CUSTOM HOME

PAGE 01/02
PAGE 01

12/20/2007 17:30 FAX 212 388 8510

CORPORATE OFFICE

R0003

(c) The Account(s) shall be the property of Purchaser, solely and shall be collected by Purchaser. But if for any reason any amount(s) thereon should be paid to Seller, Seller shall notify Purchaser immediately of such payment(s), shall hold any check(s), note(s), draft(s), money or other instrument(s) for the payment of money to be received in trust for the benefit of Purchaser, and shall pay over such money and transmit such check(s) or draft(s) to Purchaser in kind, at its office within 5 days of receipt thereof. SELLER AGREES TO FORFEIT ANY RIGHT TO PURCHASE OR TO RECOVER ANY AMOUNTS IT MAY HAVE WITH RESPECT TO ANY OTHER PAYMENTS NOW OR TO BECOME DUE TO SELLER UNDER THIS AGREEMENT.

(p) The paragraphs of this Agreement are severable, and in the event that any paragraph or portion of this Agreement is declared illegal or unenforceable, the remainder of this Agreement will be effective and binding upon the parties.

(q) This agreement shall be governed by the laws of the State of New York applicable to contracts executed in and to be performed solely within the State of New York. Seller hereby submits, at the election of Purchaser, to personal jurisdiction in the State of New York for the enforcement of this agreement or any claim(s) thereunder, and hereby waives any and all rights under the laws of any foreign jurisdiction to object to such jurisdiction. Any claim by Seller against Purchaser shall be brought in the State of New York only. In any suit or proceeding relating to this Agreement, the parties mutually waive trial by jury.

(R) SELLER HEREBY AND UNCONDITIONALLY WARRANTS THAT IT WILL AT ALL TIMES REMAIN CURRENT ON ANY AND ALL STATE OR FEDERAL PAYMENTS AND OTHER TAXES.

(S) Seller hereby grants quantum sufficiency to sign its name on any forms required by any governmental entities (including but not limited to Bloomberg tests or similarly required government forms) for the purpose of perfecting the perfection of an assignment and transfer of payment to Purchaser and/or to recover from a breach of the security agreement provided for in (I) above.

Seller (assignor) covenants that he will receive any moneys advanced hereunder as trust funds to be first applied to the following expenditures relating out of the improvement of real property and incurred in the performance of said covenants:

- A) Payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen;
- B) Payment of the amount of taxes based on payrolls including such persons and withheld or required to be withheld or required to be withheld and taxes based on the purchase price or value of materials or equipment required to be installed or furnished in connection with the performance of the improvement;
- C) Payment of taxes and unemployment insurance and other contributions due by reason of the employment of which such claims arise;
- D) Payment of any benefits or wage supplements, or the amounts necessary to provide such benefits or furnished such supplements, to the extent that the trustee, as employer, is obligated to pay or provide such benefits or furnish such supplements by any agreement to which he is a party;
- E) Payment of premiums on a surety bond or bonds filed and premiums on insurance accrued during the making of the improvement.

Nothing in this covenant shall be considered as imposing upon the Purchaser (assignee) any obligation to see to the proper application of moneys advanced under such assignment by the assignee.

SELLER AGREES TO HOLD PURCHASER HARMLESS FROM ANY BREACH OF SELLER'S REPRESENTATIONS, WARRANTIES, AND AGREEMENTS CONTAINED HEREIN WITHOUT ANY EFFECT WHATSOEVER FOR SETOFFS, DEDUCTIONS OR COUNTERCLAIMS.

ACCEPTED AND AGREED

By: S. Dimmonds, & Asst. Exec.
QUANTUM CORPORATION FUNDING LTD.

Dated this day 20 DEC 2007
By: David R. Weyand
Signature and Title
President

Warranty: The undersigned (not including the Seller) hereby personally guarantees (s) and shall be jointly and severally liable for the warranties, representations and covenants made by Seller set forth above.

By:

By: David R. Weyand
Signature and Title
President

Affirmation and Certification:

State of _____ County of _____
Solely to be before me this _____ day of _____ 20__

Signature of Notary Public

WE ARE PURCHASING OUTRIGHT THE GROUP OF ACCOUNTS AMOUNTED HEREIN FOR THE PRICE SPECIFIED ON THE REVERSE SIDE HEREOF. WE ARRIVED AT THE PRICE BY ANALYZING THE CREDIT RISK THAT WE ARE ASSUMING AS WELL AS THE TIME THAT MIGHT ELAPSE BEFORE WE COLLECT THE PROCEEDS OF THOSE ACCOUNTS THAT DO ULTIMATELY PAY US. AS AN ENCOURAGEMENT TO OUR CLIENTS TO SELL US THE "HIGHEST QUALITY" ACCOUNTS, (I.E., THOSE THAT ARE PAID QUICKLY) WE ARE PURSUING TO OFFER REBATES ON THE DISCOUNT THAT WE APPLIED IN ARRIVING AT THE PURCHASE PRICE, PROVIDED THAT WE SHALL HAVE FIRST RECOVERED OUR PURCHASE PRICE IN FULL WITHIN 180 DAYS OF THE DATE OF THE PURCHASE. THE FOLLOWING SCHEDULE SHOWS THE AMOUNT OF REBATE THAT YOU MAY BE ENTITLED TO IN THOSE CASES WHERE THE ACCOUNTS SHOULD BE PAID TO US MORE QUICKLY THAN WE HAD ANTICIPATED WHEN WE CALCULATED THE DISCOUNT. THERE SHALL BE NO REBATE ON INVOICES COLLECTED BEYOND 180 DAYS. NOTWITHSTANDING ANYTHING CONTAINED HEREIN UNDER NO CIRCUMSTANCES SHALL THE DISCOUNT RARELY BY PURCHASER JUDGMENT TO LESS THAN \$250.00.

TH 25914

Accounts of the Bulk Paid within 1 to 30 days ...	27. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 31 to 45 days ...	26. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 46 to 60 days ...	25. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 61 to 75 days ...	24. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 76 to 90 days ...	23. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 91 to 105 days ...	22. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 106 to 120 days ...	21. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 121 to 135 days ...	20. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 136 to 150 days ...	19. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 151 to 165 days ...	18. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 166 to 180 days ...	17. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 181 to 195 days ...	16. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 196 to 210 days ...	15. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 211 to 225 days ...	14. per Hundred of the Account Amount.
Accounts of the Bulk Paid within 226 to 240 days ...	13. per Hundred of the Account Amount.

12/18/2007 17:33 4108132828

WESTWOOD CUSTOM HOME

PAGE 03

12/18/2007 16:27 4108591196

PAGE 02/02

12/18/2007 17:21 4108132828

WESTWOOD CUSTOM HOME

PAGE 01

12/18/2007 17:11 FAX 212 768 1224

QUANTUM FUNDING

0002

1 /18/07

**EXHIBIT A TO: PURCHASE & SALE AGREEMENT
BETWEEN
QUANTUM CORPORATE FUNDING, LTD (PURCHASER)
&
Westwood Design Build Incorporated (Seller)
Transaction# 25914 Clitran#:**

Date	Invoice#	Inv. Acct. Debtor	Deb. Ref. No.	Childs#	Company/Ref. #	Job#	Contract	Invoice Amount
12/18/07	10084	48 National	EXL 32772			Subject: Pollydora Knoxbridge Construction D&W, Pollydora module Delivery-#80033 SIBS. Curbside delivery completed amount due and owing		*****\$347,000.00
								*****\$347,000.00

Page: 1 Transaction# 25914

TOTAL INVOICES: \$347,000.00

Seller hereby verifies the accuracy of the above:

By

K David L. Wainwright Title President

Westwood Design Build Incorporated
12109 Gordon Avenue
P.O. Box 105 Beltsville MD 20705

12/18/07

Mr. Christopher Washburn
Ranch Manager
National City Mortgage Company
852 Walker Drive, Suite 400
Reebelt, MD 20770

Transaction#: 25914 Client#: 5999 Debtor#: 32772.

P.O. / Contract#	Subcontractor / Contractor / Job / Project	Contract P.O. Date Invoice# Inv. Date Terms Invoice Amount
	Project: Pollydora Residence. Construction Draw, Pollydora outside delivery-10002351584. Outside delivery completed amount due and owing	10004 12/10/07 48 ***5317,000.00

*****5317,000.00

Dear Mr. Washburn:

We have entered into a factoring agreement with Quantum Corporate Funding, Ltd.
Therefore, this letter serves as your irrevocable authority to send payment for
above captioned invoice(s) directly and solely to Quantum Corporate Funding, Ltd.
1140 Avenue of The Americas 15th Floor New York, NY 10036

Thank you for your cooperation.

David R. Warfield
Very truly yours,
Westwood Design Build Incorporated



INVOICE

Date	Invoice #
12/18/2007	10084


BILL TO:
National City Mortgage/National City Bank Christopher Washburn, Vice President 9852 Walker Drive, Suite 400 Greenbelt, MD 20770

REMIT TO:
Westwood Design/Build Inc. P.O. Box 105 Beltsville, MD 20704

	Terms	P.O. No.	PROJECT	
	Net 45		Pollydore Residence	
Quantity	Description		Rate	Amount
	Construction Draw Pollydore Module Delivery - #0005351534 Curbside Delivery Completed Amount Due and Owing		347,000.00 0.00	347,000.00 0.00
<p>This invoice has been sold, assigned and transferred to: Quantum Corporate Funding, Ltd.</p> <p>Make all checks payable and mail to:</p> <p>Quantum Corporate Funding, Ltd. 1140 Avenue of the Americas, 16th Floor New York, New York 10036</p>				
Modules Delivered			Total	\$347,000.00

Lien Online - Confirmation

Page 1 of 1

	Form Preview / Reports / Preferences / Help	Home	Log Off
	SHELLEY SIMMONDS 10/18/2007 5:10:14 PM ET	ORDER DOCUMENTS SEARCH PUBLIC RECORDS	MY PORTFOLIO All Our Power Under Your Control.

Confirmation

Order Number: 12441384
 Date Ordered: 10/18/2007 5:10:10 PM ET
 Delivery Method: iLien Only
 Expedite: No

Special Instructions**Deliver To:**

Shelley Simmonds
 Quantum Corporate Funding Ltd
 1140 Avenue of the Americas
 16th Floor
 New York, NY 10036
 United States of America
 212-768-1200
 212-944-8216
 shelly@quantumfunding.com

Bill To:

CRAIG SHEINKER
 QUANTUM CORPORATE FUNDING, LTD.
 1140 AVE OF THE AMERICAS
 16TH FLOOR
 NEW YORK, NY 10036
 2127681200
 2129448216

Filing Description

Item	Client #	REF 2	Debtor	Service	Jurisdiction	UDS#	Service Detail
1	5999		Westwood Design Build, Incorporated	UCC Filing-Original	MD:Dept of Assessments/Taxation	B26434472	Print final docs

UCC APPROVAL SHEET **** KEEP WITH DOCUMENT ****

TRANSACTION TYPE **FEES REMITTED**

<input checked="" type="checkbox"/> UO - Original Financing Statement	\$25.00
<input checked="" type="checkbox"/> UOA - Original Financing Statement with assignment	\$25.00
<input type="checkbox"/> UOTU - Original Financial Statement Transmitting Utility	\$25.00
<input type="checkbox"/> UMA - Amendment	\$25.00
<input type="checkbox"/> UMDA - Amendment - Debtor Added	\$25.00
<input type="checkbox"/> UMDC - Amendment - Debtor Name Change	\$25.00
<input type="checkbox"/> UMDD - Amendment - Debtor Deleted	\$25.00
<input type="checkbox"/> UMSA - Amendment - Secured Party Added	\$25.00
<input type="checkbox"/> UMSC - Amendment - Secured Party Name Change	\$25.00
<input type="checkbox"/> UMSD - Amendment - Secured Party Deleted	\$25.00
<input type="checkbox"/> UMC - Amendment - Continuation	\$25.00
<input type="checkbox"/> UMT - Amendment - Termination	\$25.00
<input type="checkbox"/> UMZ - Amendment - Assignment	\$25.00
<input type="checkbox"/> UMZP - Amendment - Partial Assignment	\$25.00
<input type="checkbox"/> UMCS - Amendment - Correction Statement	\$25.00
<input type="checkbox"/> UOMH - Manufactured Home-Original Financing Statement	\$25.00
<input type="checkbox"/> UOPF - Public Finance Original Financing Statement	\$25.00
<input type="checkbox"/> Documents Nine (9) Pages or More	\$75.00
<input type="checkbox"/> Certified Copies	
<input type="checkbox"/> Plain Copies	
TOTAL FEES:	2500

Affix Barcode Label Here



Affix Text Label Here

RECORDED ON 10/19/2007 AT 11:45 AM
 IN THE FINANCING RECORDS OF THE MD. ST.
 DEPARTMENT OF ASSESSMENTS AND TAXATION.
 MD # 0001480527 ACK # 1000381995482938
 ORIGINAL FILE NUMBER: 0000000101323153
 PAGES: 0002

☐ OTHER CHANGES:

Code _____

Attention: _____

NO FEE TRANSACTION TYPES

<input type="checkbox"/> URC - Copies
<input type="checkbox"/> UNCP - Void - Non-Payment
<input type="checkbox"/> UCC - Cancellation
<input type="checkbox"/> UCR - Reinstatement
<input type="checkbox"/> UCO - Departmental Action
<input type="checkbox"/> UCREF - Refund Recordation Tax
<input type="checkbox"/> UCIS - Incorrect ID Number
<input type="checkbox"/> XOVRU - UCC Overrides
<input type="checkbox"/> UMFC - Filing Office Correction Statement

UCC DIRECT SERVICES
 P O BOX 29071
 GLENDALE

CA 91209-0071

Method of Payment:

Cash ☐ Check ☒ Credit Card ☐

Number of Checks ☒ 4

Comment(s):

CUST ID: 000237400
 WORK ORDER: 00014806
 DATE: 10-23-2007 11:
 AMT. PAID: \$400.00

iLien Coverpage

Date Printed: 10/18/2007

Debtor:

Westwood Design Build, Incorporated
12109 Gordon Avenue
Beltsville, MD 20737

Client #: 5999

iLien File #: 26434472

Order Confirmation #: 12441384

UserID: 72104

Number of Collateral Pages Attached: 0

Transaction Type: Original

Jurisdiction: MD, Dept of Assessments/Taxation

CUST ID: 8882837488
WORK ORDER: 8881488527
DATE: 10-23-2007 11:12 AM
ATT. PRID: \$488.00

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (front & back)

A. NAME & PHONE OF CONTACT AT FILER
Phone: (800) 331-3282

B. SEND ACKNOWLEDGEMENT TO: (Name and Address) 706712 QUANTUM CORP

UCC Direct Services 12441384
P.O. Box 29071
Glendale, CA 91209-9071 MDMD

RECEIVED
 DEPARTMENT OF
 ASSESSMENTS & TAXATION
 2007 OCT 19 4:11:45

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
 Westwood Design Build, Incorporated

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 12109 Gordon Avenue Beltsville MD 20737 USA

1d. SEE INSTRUCTIONS **ADDL INFO RE ORGANIZATION DEBTOR** **1e. TYPE OF ORGANIZATION** CORPORATION **1f. JURISDICTION OF ORGANIZATION** MD **1g. ORGANIZATIONAL ID #, if any** D11071552 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS **ADDL INFO RE ORGANIZATION DEBTOR** **2e. TYPE OF ORGANIZATION** **2f. JURISDICTION OF ORGANIZATION** **2g. ORGANIZATIONAL ID #, if any** ☐ NONE

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
 Quantum Corporate Funding, Ltd.

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
 1140 Avenue of the Americas 16th Floor New York NY 10036 USA

4. THE FINANCING STATEMENT covers the following collateral:

EXHIBIT "A" All assets of the Debtor, including but not limited to, all personal property and fixtures in which Debtor has an interest, now or hereafter existing or acquired, and whatsoever located, tangible or intangible, including but not limited to, all present or hereafter existing or acquired tools, goods, (including, without limitation, all equipment, inventory, furniture, receivables, accounts, security agreements, notes, bills, acceptances, instruments, installment paper, chattel paper, documents, certificates of deposit, deposit accounts, tax refunds, insurance proceeds, conditional sale or lease contracts, cash or cash equivalents, chattel mortgages or deeds of trust, general intangibles, all intellectual property including, without limitation, patents, trademarks and copyrights and applications for all of the foregoing, contract rights, and all other hypothecation, and promise or duty to pay money, now or hereafter owned or acquired by Debtor (including without limitation all rights of Debtor as an unpaid vendor), and all proceeds and collections thereof, all guarantees and other security therefor, and all right, title and interest of Debtor in any returned, repossessed, rejected or unshipped goods, together with all of Debtor's books of account, ledger cards, customer lists and records, all vehicles, all computer programs and systems owned or operated in connection therewith, all of the above securing present and future advances and all proceeds, products, returns, additions, accessions and substitutions of and to pay any of the foregoing. All of the terms used in this Financing Statement are, to the extent defined in the Uniform Commercial Code of the State of New York, used in this Financing Statement as so defined. **NOTICE: PURSUANT TO AN AGREEMENT BETWEEN DEBTOR AND SECURED PARTY, DEBTOR HAS AGREED THAT IT WILL NOT FURTHER ENCUMBER THE ASSETS DESCRIBED ABOVE OR INCREASE THE INDEBTEDNESS THEREON, OR TRANSFER OR ASSIGN SAID ASSETS EXCEPT IN THE ORDINARY COURSE OF BUSINESS**

5. ALTERNATIVE DESIGNATION (if applicable) ☐ LESSOR/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILEE ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ THIS FINANCING STATEMENT IS TO BE FILED FOR RECORD (or recorded) IN THE REAL ESTATE RECORDS. Attach Address: ☐ ADDITIONAL FEE: ☐ **7. CHECK TO REQUEST SEARCH REPORT(S) on Debtor(s) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2**

8. OPTIONAL FILER REFERENCE DATA

12441384 5999

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 09/22/02)

Prepared by UCC Direct Services, P.O. Box 29071, Glendale, CA 91209-9071 Tel: (800) 331-3282

12/21/2007 13:17 4108132828
12/20/2007 16:53 4108591196
12/20/2007 17:03 4108132828

WESTWOOD CUSTOM HOME

PAGE 05

PAGE 01/01

WESTWOOD CUSTOM HOME

PAGE 01



Quantum Corporate Funding, Ltd.
1140 Avenue of the Americas, 16th Floor
New York, NY 10036
Ms. Shelley Simmonds

December 20, 2007

Ref: Payment Authorization

Dear Ms. Simmonds,

Pursuant to your request, this letter serves as authorization to forward \$112,168.28 (One Hundred Twelve Thousand - One Hundred Sixty Eight and twenty - eight cents) on behalf of Westwood Design/Build Inc., to Penn Lyon Homes Corporation.

Please subtract the above listed amount from advance T #25914.

Thank you for your immediate attention in this matter.

Professionally,

A handwritten signature in dark ink, appearing to read "David R. Warfield". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David R. Warfield
President, Westwood Design/Build Inc.

Cc: M Conrad

12/20/2007 15:46

4108132828

WESTWOOD CUSTOM HOME

PAGE 02

Inspector BALWIN

WIRING INSTRUCTIONS

Bank Name: Omega Bank, N.A.
Wire Name: Omega State College
ABA#: 031316271

For further credit of Penn Lyon Homes, Inc. A/C
#40224230

P.O 107 195 AIRPORT RD
SELINGROVE, PA 17870
Bank Address

Omega Bank
366 Walker Drive
State College, PA 16801

Transactions

Page 1 of 2

**STERLING NATIONAL BANK**[Contact](#) [Help](#) [Exit](#)[Home Banking](#) [Bill Payment](#) [Options](#)
[Main](#) | [Transactions](#) | [Download](#) | [Statements](#) | [Stop Payments](#) | [Prior Day](#)

Sterling National Bank • 650 Fifth Avenue New York, New York 10019 • (212) 760-2031

Current Account: QUANTUM CO S MOSS

Transactions from 12/21/2007 to 12/21/2007

View Transactions Since: Last statement Total Transactions This Page: 36

NOTE: Click on a column name to sort transactions by that column in ascending (Δ) or descending (∇) order.

Date ∇	Check#	Description	Debits	Credits	Balance
--------	--------	-------------	--------	---------	---------

12/21/2007		OT: OMEGA STATE COLLEGE	(112,168.28)		2,305,012.77
		FURTHER CREDIT: PENN LYON HOME			
12/21/2007		OT: WESTWOOD DESIGN BUILD INCO	(130,731.72)		2,417,181.05



P.O. BOX 27, AIRPORT ROAD
SELENSGROVE, PA 15370
(570) 374-4004
FAX: (570) 374-8053
Web: www.pennivon.com

850

DATE PRINTED
Dec 20, 2007

SOLD TO: 3445
Westwood Design/Build Inc.
13400 Baltimore Blvd. 2nd Floor
Laurel MD 20707

SHIPPED TO:

SERIAL NO.	SIZE AND MODEL	EX. COLOR	PP	COD	SALESPERSON
11188					ED C.
OPTION NO.	DESCRIPTION	AMOUNT			
	POLLYDORE RESIDENCE	\$212,168.28			
	212.188.28				
	-50,000.00 W/o Rec'd 06/28/07				
	162.168.00				
	-50,000.00 W/o Rec'd 11/18/07				
	112.168.28 Balance Due				
			BASE \$ 189,739.11		
			OPTIONS \$ _____		
			SUBTOTAL \$ _____		
			SALES OR USE TAX \$ 5,692.17		
			SET UP (SUBCONTRACTED) \$ _____		
			FREIGHT \$ 16,737.00		
			CARRIER DEPOSIT \$ _____		
			INVOICE TOTAL \$ 212,168.28		
			LESS DEPOSIT OR CREDIT \$ 100,000.00		
			NET DUE \$ 112,168.28		
			CARRIER NOS. _____		
			WHITE - BUILDER		
			GREEN - AR		
			YELLOW - FILE		
			PINK - SALES FILE		
			GOLD - ACCOUNTING		

Materials contained herein remain the property of Fort Lyon Homes Corporation until bill invoice is paid in full with certified U.S. funds.

Bernard Kobroff

From: Craig Sheinker [cshei1@att.blackberry.net]
Sent: Wednesday, January 16, 2008 1:26 PM
To: Bernard Kobroff
Subject: Fw: Westwood Design

Sent via BlackBerry by AT&T

-----Original Message-----

From: "Maria DeSouza" <maria@quantumfunding.com>

Date: Tue, 15 Jan 2008 10:56:24

To: "Blackberry -- Craig Sheinker" <cshei1@mycingular.blackberry.net>

Subject: Westwood Design

FYI

-----Original Message-----

From: Justice, Timothy [mailto:Timothy.Justice@NCMC.com]

Sent: Tuesday, January 15, 2008 10:28 AM

To: Maria DeSouza

Subject: RE: Westwood Design

Maria,

Please inform Craig that he must direct all concerns regarding this transaction to Mike Conrad at Westwood Design. National City Mortgage doesn't have any obligations to a contact or agreement between your company or Westwood Design. I have informed Mike to contact Craig regarding his concerns.

Tim Justice

Draw Division - Team Manager

Construction / Rehab Lending Department

National City Mortgage, a division of National City Bank

3232 Newmark Dr, Building 1

Miamisburg, OH 45342

Direct: 937-910-3205

Toll Free: 866-312-2271 ext. 53205

Fax: 937-910-4085

Timothy.Justice@ncmc.com

From: Maria DeSouza [mailto:maria@quantumfunding.com]

Sent: Friday, January 11, 2008 5:15 PM

To: Justice, Timothy

Subject: Westwood Design

Hello Mr. Justice,

Per your conversation with Craig Sheinker, attached you will find documents signed by Christopher Washburn. Please review and get back to Craig on Monday at 800-352-2535 or 212-768-1200 x.20.

If you have any questions, please feel free to contact me.

Maria Luiza De Souza

Jr. Account Executive

1140 Avenue of the Americas, 16th Floor

New York, N.Y 10036

Tel: 212-768-1200

Fax: 212-944-8216

<<25914.pdf>> <<25914 B.pdf>> <<Westwood UCC1.pdf>>

- ***The following annotations have been made

- Please be aware that e-mail is NOT a secured communication vehicle, and that others may in certain circumstances be able to view its contents. As a result, while we are happy to provide this information by e-mail, we do NOT conduct actual business transactions by e-mail. Please contact the sender directly if you have any concerns about this message. All loans subject to credit approval and property appraisal. Equal Housing Lender. This communication is a confidential and proprietary business communication. It is intended solely for the use of the designated recipient(s). If this communication is received in error, please contact the sender and delete this communication.
=====

Complaint

JUDGE KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 00539

-----X
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

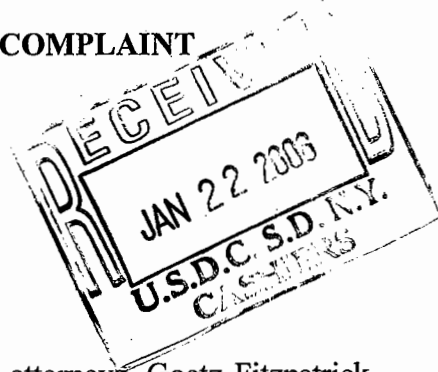
Civil Action
Docket No.

-against-

WESTWOOD DESIGN/BUILD
INCORPORATED, DAVID R. WARFIELD,
And NATIONAL CITY MORTGAGE INC.,

Defendants.
-----X

COMPLAINT



Plaintiff, Quantum Corporate Funding, Ltd., by its attorneys, Goetz Fitzpatrick, LLP, as and for its Complaint against the defendants alleges, upon information and belief, as follows:

THE PARTIES

1. Plaintiff Quantum Corporate Funding, Ltd. ("Quantum") is a corporation organized and existing under the laws of the State of New York, maintaining its principal place of business located at 1140 Avenue of the Americas, New York, New York 10036 and is engaged in the business of commercial finance.

2. Defendant Westwood Design/Build Incorporated ("Westwood") is a corporation organized and existing under the laws of the State of Maryland maintaining its principal place of business located at 12109 Gordon Avenue, Beltsville, Maryland 20705.

3. Defendant David R. Warfield ("Warfield") is a natural person, a resident of the State of Maryland whose address is 715 East Maple Road, Linthicum Heights, Maryland 21090.

4. Defendant National City Mortgage Inc. ("National") is a corporation organized and existing under the laws of the State of Ohio, maintaining its principal place of business located at 3232 Newmark Drive, Miamisburg, Ohio 45342.

JURISDICTION AND VENUE

5. There is original jurisdiction in this Court pursuant to 28 U.S.C. §1332 since there is diversity of citizenship between plaintiff Quantum and each of the defendants and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

6. Venue lies in this Court pursuant to 28 U.S.C. §1391(a) since a substantial part of the events or omissions giving rise to the claim herein occurred in this district.

**FIRST CAUSE OF ACTION AGAINST
NATIONAL FOR BREACH OF CONTRACT**

7. On or about January, 2007 Mr. and Mrs. Eustace Pollydore, as owners, entered into a contract with defendant Westwood, as contractor, with defendant National, as construction lender, pursuant to which Westwood contracted to construct a new home at 6117 Elm Street, Lanham, Maryland for the Pollydores ("the Project").

8. By virtue of the work and materials furnished by defendant Westwood to the Pollydores for the Project there became due to Westwood from defendant National the sum of \$347,000.00 for which an invoice was rendered by Westwood to National (the "Invoice").

9. Defendant Westwood made an assignment to plaintiff Quantum of the moneys due to Westwood from defendant National on account of the Invoice (the "Assignment").

10. Simultaneously with the Assignment or within a short time thereof, plaintiff Quantum and defendant Westwood each gave notice of the Assignment to defendant National, and National acknowledged receipt of the Assignment.

11. By virtue of the Assignment, there was assigned by defendant Westwood to plaintiff Quantum, the sum of \$347,000.00.

12. By virtue of the foregoing, there became due and owing to plaintiff Quantum from defendant National, the sum of \$347,000.00.

13. Defendant National has refused to pay the Invoice, leaving due and owing to plaintiff Quantum the amount of \$347,000.00 for which demand has been duly made.

**SECOND CAUSE OF ACTION AGAINST
NATIONAL FOR BREACH OF CONTRACT**

14. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "13" of this Complaint with the same force and effect as if fully set forth at length hereat.

15. Defendant National issued an estoppel certificate to plaintiff Quantum that the Invoice was correct and owing and that the work and materials invoiced had been completed and accepted (the "Estoppel Certificate").

16. Plaintiff Quantum relied upon the Estoppel Certificate in purchasing the Invoice from Westwood.

17. The \$347,000.00 Invoice amount was acknowledged by defendant National to plaintiff Quantum as being due and owing.

18. By virtue of the foregoing, there was due and owing to plaintiff Quantum from defendant National \$347,000.00.

19. Defendant National has refused to pay Quantum the \$347,000.00 amount due pursuant to the terms of the Estoppel Certificate leaving due and owing to Quantum the amount of \$347,000.00 for which demand has been made.

**FIRST CAUSE OF ACTION AGAINST
WESTWOOD FOR BREACH OF CONTRACT**

20. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "19" of this Complaint with the same force and effect as if fully set forth at length hereat.

21. On December 20, 2007, in conjunction with the Assignment made by defendant Westwood to plaintiff Quantum, a Purchase and Sale Agreement (the "Agreement") was made, executed and delivered between Westwood and Quantum.

22. The Agreement set forth certain warranties, representations and covenants by defendant Westwood to plaintiff Quantum regarding the Assignment.

23. Defendant Westwood has breached the warranties, representations and covenants made by it in the Agreement, including those stating that the Invoice was presently due and owing and that there were no set-offs or defenses against the assigned Invoice.

24. Defendant National asserts that the Invoice was not due and owing and that it has set-offs or defenses against the assigned Invoice.

25. As a result of defendant Westwood's breach of the Agreement, plaintiff Quantum has been damaged in the sum of not less than \$347,000.00.

26. Plaintiff Quantum has incurred and will incur attorneys fees in the prosecution of its claims, the extent of which is not yet known, for which defendant Westwood agreed, pursuant to the Agreement, to pay.

27. Due to defendant Westwood's breach of the Agreement, plaintiff Quantum has incurred damages, including attorney's fees, the final amount to be determined at trial.

**FIRST CAUSE OF ACTION AGAINST
WARFIELD FOR BREACH OF CONTRACT**

28. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "27" with the same force and effect as if fully set forth at length hereat.

29. In conjunction with the Assignment and the Agreement, defendant Warfield made, executed and delivered to plaintiff Quantum a guarantee (the "Guarantee") in writing whereby he personally guaranteed defendant Westwood's performance of the Agreement's warranties, representations and covenants.

30. Defendant Warfield has failed to perform defendant Westwood's Agreement's warranties, representations and covenants.

31. Defendant Warfield breached his Guarantee of defendant Westwood's Agreements warranties, representations and covenants.

32. As a result of defendant Warfield's breach of this Guarantee, plaintiff Quantum has been damaged in the sun of not less than \$347,000.00.

33. Plaintiff Quantum has incurred and will incur attorneys fee in the prosecution of its claims against defendants Westwood and Warfield, the extent which are not yet known, but for which Warfield agreed, pursuant to his Guarantee, to pay.

34. Due to defendant Warfield's breach of his Guarantee, plaintiff Quantum has incurred damages of not less than \$347,000.00 exclusive of attorneys' fees, the final amount to be determined at trial.

**SECOND CAUSE OF ACTION AGAINST
WESTWOOD AND WARFIELD FOR FRAUD**

35. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "34" of this complaint with the same face and effect as it fully set forth herein at length hereat.

36. In or about December 2007, defendants Westwood and Warfield fabricated the Invoice to defendant National, falsely stating that defendant Westwood had performed the work required of it pursuant to its contract with the Pollydore.

37. In or about December 20, 2007, in order to induce plaintiff Quantum to accept from defendant Westwood an assignment of the Invoice, defendants Westwood and Warfield represented to Quantum that the Invoice was presently due and owing and represented an account receivable not subject to any defenses.

38. The representations made by defendants Westwood and Warfield were false, and in truth, the Invoice was worthless and not in fact a good account receivable.

39. When the representations were made by defendants Westwood and Warfield, each knew them to be false and made then with the intent to deceive and defraud plaintiff Quantum and to induce Quantum to accept an assignment of the Invoice.

40. Plaintiff Quantum at the time the representations were made, did not know the truth regarding them but believed them to be true, relied upon them and was, thereby induced to accept an assignment of the Invoice and to pay to or on behalf of defendant Westwood \$242,900.00.

41. Plaintiff Quantum did not know the true facts regarding the Invoice until or about January 11, 2007.

42. The Invoice is worthless and was so at the time it was assigned to Quantum.

43. As a result of the false representations made by the defendants Westwood and Warfield, plaintiff Quantum has been damaged in the sum of \$242,900.00.

**THIRD CAUSE OF ACTION AGAINST
WESTWOOD AND WARFIELD FOR CONVERSION**

44. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "43" of this Complaint with the same force and effect as if fully set forth at length thereat.

45. Defendants Westwood and Warfield converted \$242,900.00 belonging to plaintiff Quantum.

WHEREFORE, the plaintiff, Quantum Corporate Funding Ltd., demand judgment as follows:

1. On the First Cause of Action against defendant National City Mortgage Inc., in the sum of \$347,000.00.

2. On the Second Cause of Action against defendant National City Mortgage Inc., in the sum of \$347,000.00.

3. On the First Cause of Action against defendant Westwood Design/Build Incorporated not less than the sum of \$347,000.00.

4. On the First Cause of Action against defendant David R. Warfield not less than the sum of \$347,000.00.

5. On the Second Cause of Action against defendant Westwood Design/Build Incorporated and David R. Warfield, jointly and severally, in the sum of \$242,900.00 together with punitive and exemplary damages in the sum of \$500,000.00.

6. On the Third Cause of Action against defendants Westwood Design/Build Incorporated and David R. Warfield, jointly and severally, in the sum of \$242,900.00 together with punitive and exemplary damages in the sum of \$500,000.00.

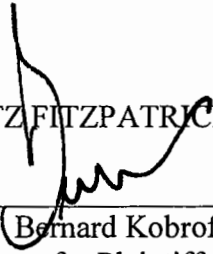
7. Pre-judgment and Post-judgment interest.

8. Costs, disbursements and reasonable attorney's fees in an amount to be determined at trial.

9. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 22, 2008

GOETZ FITZPATRICK LLP

By: 
(Bernard Kobroff (BK 0101))
Attorneys for Plaintiff
Quantum Corporate Funding, Ltd.
One Penn Plaza, 44th Floor
New York, New York 10119
(212) 695-8100

JUDGE KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
QUANTUM CORPORATE FUNDING, LTD.,

08 CV 00539

Plaintiff,

Docket No.

-against-

WESTWOOD DESIGN/BUILD INCORPORATED,
DAVID R. WARFIELD, and NATIONAL CITY
MORTGAGE INC.,

Defendants.
-----X

**PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF PRELIMINARY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

Bernard Kobroff, Esq.
GOETZ FITZPATRICK LLP
Attorneys for Plaintiff
Quantum Corporate Funding, Ltd.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-8100

PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of plaintiff Quantum Corporate Funding, Ltd. ("Quantum") and in support of its motion for a preliminary injunction and Temporary Restraining Order ("TRO") pursuant to F.R.C.P. Rule 65. Upon the proofs submitted, plaintiff Quantum is entitled to a TRO and a preliminary injunction during the pendency of this action and pending the hearing and determination of Quantum's motion: (a) enjoining and restraining the defendant Westwood Design/Build Incorporated ("Westwood") from, without the written consent of the plaintiff, selling, transferring, assigning or in any way conveying or encumbering assets pledged by it to Quantum as security, or of moneys received in payment of its accounts receivable, or of moneys received from Quantum, or of goods and materials paid for by Quantum; and (b) enjoining and restraining the defendant David R. Warfield ("Warfield") from, without the written consent of the plaintiff, selling, transferring, assigning or in anyway conveying or encumbering any monies or property in the name of or received from or belonging to or held for the benefit of defendant Westwood.

STATEMENT OF FACTS

The facts underlying plaintiff's motion are set forth in the Affidavit of Craig Sheinker, sworn to January 22, 2008. These facts undisputedly evidence that defendants Westwood and Warfield converted \$242,900.00 of Quantum's monies by fraudulently inducing Quantum to purchase from them an account receivable by fraudulently representing to Quantum that this receivable was due and owing to Westwood by defendant National City Mortgage Inc. ("National").

**PLAINTIFF IS ENTITLED TO PRELIMINARY INJUNCTIVE
RELIEF AND A TEMPORARY RESTRAINING ORDER**

To be entitled to a preliminary injunction and a Temporary Restraining Order a party must show: (1) a probability of success on the merits in the underlying action; (2) a danger of irreparable injury without such relief and (3) a balance of the equities in its favor. Aetna Ins. Co. v. Capasso, 75 N.Y.2d 860, 862, 552 N.Y.S.2d 918 (1990).

IT IS PROBABLE THAT PLAINTIFF WILL PREVAIL ON THE MERITS

Given the account debtor National's disavowance of payment of the defendant Westwood's account receivable, there can be no dispute that defendant Westwood breached the warranties, representations and covenants set forth in its sale agreement with Quantum and defendant Warfield breached his guarantee of Westwood's warranties, representations and covenants.

**A. Westwood's Breach of its Express Warranties of Sale Make
it Liable in Damages for the Injury Caused Quantum**

The “basis of the bargain” between defendant-seller Westwood and plaintiff-purchaser Quantum was that the account receivable invoice amount was as stated and was payable without dispute, set-off or counterclaim. In reliance upon those express warranties, Quantum purchased the invoice. The Court of Appeals in CBS, Inc. v. Ziff-Davis Pub. Co., 75 N.Y.2d 496, 503, 555 N.Y.S.2d 449, 452 (1990) favorably quoted Judge Learned Hand's definition of “warranty”, i.e.:

“an assurance by one party to a contract of the existence of a fact upon which the other party may rely. It is intended precisely to relieve the promisee of any duty to ascertain the fact for himself; it amounts to a promise to indemnify the promisee for any loss if the fact warranted proves untrue. . .” Metropolitan Coal Co. v. Howard, 155 F.2d 780, 784 (2d Cir. 1946).

The Court, then citing Ainger v. Michigan Gen. Corp., 476 F.Supp. 1209, 1225 (S.D.N.Y.

1979) aff'd 632 F.2d (2d Cir. 1980), stated:

“The decisive question is whether [the purchaser] purchased the express warranties as bargained-for contractual terms that were part of the purchaser agreement.” Ziff, supra at 502.

If these express warranties were “bargained-for contractual terms”, the Court concluded:

“The express warranty is as much apart of the contract as any other term. Once the express warranty is shown to have been relied on as part of the contract...The right to indemnification depends only on establishing that the warranty was breached.” Ziff, supra at 503. (Emphasis Added).

As evidenced by account-debtor National’s e-mail denying liability for the invoice, Westwood’s warranty that the invoice amount was payable without dispute has been breached. See Danna Metro Heating v. Mobile Oil Corp., 203 A.D.2d 231, 609 N.Y.S.2d 658, 660 (2d Dept. 1994) (difference between number of customers promised and number actually delivered established seller’s breach of warranty).

In purchasing Westwood’s account, Quantum was not buying a “chose-in-action” against defendant National for breach of contract. Rather, it was buying, as Westwood expressly promised, an undisputed account payable. Quantum did not buy the risk that National would not pay because Westwood had not performed. The purpose of a warranty, as Judge Hand noted, is “to relieve the promisee of any duty to ascertain the fact for himself”. Herein that “fact” was that the “account(s) are presently due and owing to seller and the amounts thereof are not and will not be in dispute.”

Westwood’s breach of its express warranties gave rise to a duty to indemnify Quantum for the damages caused thereby. Ziff, supra. at 502. The damages suffered by Quantum as a result of

Westwood's breach is the invoice amount, interest thereon, court costs and disbursements, and the attorneys fees incurred in having to prosecute this action. *See* 93 Jur.2d, Sales sec. 235, Measure of Damages for Breach of Warranty.

**B. Westwood's Breach and Warfield's Failure to Perform
Westwood's Obligations Pursuant to His Guarantee Makes
Him Liable For the Damages The Injury Caused.**

A contract of guaranty is a promise by a guarantor to answer on the default of the performance of an obligation by the person liable in the first instance to perform. Coburn Corp. of America v. Orr, 60 Misc.2d 912, 304 N.Y.S.2d 345, 348 (Civil Ct. Kings Co. 1969).

Accordingly, after Westwood's warranty that the invoiced amount was payable without dispute, set-off or counterclaim was breached by National's disavowance of the invoice, the contingency underlying Warfield's collateral liability to indemnify Quantum, occurred. Michaels v. Chemical Bank, 110 Misc.2d 74, 441, N.Y.S.2d 638, 640 (Sup. Ct. N.Y. Co. 1981) (guaranty "binds the guarantor to a relationship under which he may become indebted in the future, if and, when the debtor defaults").

**PLAINTIFF WILL SUFFER IRREPARABLE INJURY IF THE TRO
AND PRELIMINARY INJUNCTION ARE NOT GRANTED**

Pursuant to New York law, the application of which defendants Westwood and Warfield both agreed to pursuant to the terms of the Purchase and Sale Agreement (paragraph [g] thereof):

"A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual..." CPLR Sec. 6301.

Herein, the evidence demonstrates that unless injunctive relief is granted, that by the time

a money judgment is recovered against defendants Westwood and Warfield, there will be no assets remaining to enforce it against, thus rendering the judgment ineffectual.

Further, evidence also demonstrates that defendants Westwood and Warfield fabricated an invoice, regarding Mr. and Mrs. Pollydore's contract, for a receivable they had not earned and then fraudently represented its value to Quantum. In addition, defendants Westwood and Warfield fabricated a false invoice from Westwood supplier, Penn Lyon Homes Construction, which Quantum paid on Westwood's behalf. Their fraud resulted in Quantum wiring a total of \$242,900.00 to Westwood and/or for Westwood's benefit, for a worthless account receivable. The fraudulently obtaining possession of another property constitutes a conversion. Schaffner v. Pierce, 75 Misc.2d 21, 347 N.Y.S. 2d 411, 414-415 (Dist. Ct. Nassau Co. 1973).

The evidence also demonstrates that defendants Westwood and Warfield have ceased business operations, i.e. after being confronted with their fraud they stopped answering their telephones and turned off their fax machines. Accordingly, in such a case the court's injunctive powers are properly invoked. See Amity Loans, Inc. v. Sterling National Bank & Trust Co., 177 A.D.2d 277, 575 N.Y.S.2d 854, 855 (1st Dept. 1991) (Court "properly recognized that injunctive relief is appropriate to remedy the conversion of identifiable proceeds as sought in the underlying action").

Therefore, given the evidence, Quantum has demonstrated that it will suffer irreparable injury if injunctive relief is not granted.

A BALANCING OF THE EQUITIES FAVORS PLAINTIFF

As regards the third element: that a balancing of the equities favor the plaintiff, there can also be no doubt. Plaintiff seeks simply to maintain the status quo, i.e., the maintenance of the

security pledged to it as collateral by defendant Westwood pending the determination of the lawfulness of defendants' Westwood and Warfield's actions.

Herein, the imposition of a Preliminary injunction and a Temporary Restraining Order upon defendants Westwood and Warfield simply requires that they do what they have already represented, warranted and covenanted to Quantum that they will do. Yet, the denial of injunctive relief to Quantum makes it likely that defendants will completely dissipate the proceeds of their tortious conduct. *See Amity, supra.*

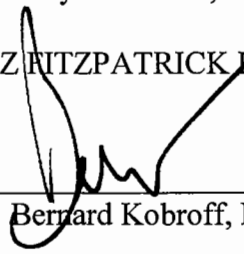
CONCLUSION

Based upon the foregoing, the Court should grant plaintiff preliminary injunctive relief and a Temporary Restraining Order pending the determination of its motion, thus maintaining the status quo pending the resolution of the action.

Dated: New York, New York
January 22, 2009

Respectfully submitted,

GOETZ FITZPATRICK LLP

By: 
Bernard Kobroff, Esq.

Attorneys for Plaintiff
QUANTUM CORPORATE FUNDING, LTD.
One Penn Plaza, Suite 4401
New York, New York 10119
(212) 695-8100

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